The BIA has held that "[t]he essence of the 'particularity' requirement…is whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons." *Matter of S–E–G*, 24 I&N Dec. at 584. The social, cultural, and political context of Ecuadorean society strongly shows that those who have been tortured by gangs for their resistance to criminal activities and recruitment stand out within their communities and are recognized as a discrete class of persons. While the Circuit Courts and BIA have in the past denied asylum claims based just on the individual's rejection of criminal and gang activity, here the present case is easily distinguishable from those cases.

In *Rodas-Orellana v. Holder*, the Tenth Circuit held that the purported PSG of "El Salvadoran males threatened and actively recruited by gangs, who resist joining because they opposed the gangs" was not a sufficiently socially distinct category. 780 F.3d 982, 992 (10th Cir. 2015). The Court here reasoned that, rather than the Respondents in that case being the specified target of recruitment, the evidence presented in country conditions reports indicated that "Salvadoran gangs indiscriminately threaten people for monetary gain or for opposing them." *Id.* at 993. The situation in the present case is distinguishable from this case in two ways. First, the Respondent was specifically targeted because of his position as a private security guard at a bank and was not the victim of "indiscriminate" violence and intimidation. Second, the Respondent here was not only threatened but was in fact tortured by the gang on at least three occasions. The act of being tortured far exceeds and is significantly distinguishable from mere coercion or threats of violence for having resisted the gang. Those within the group of "Ecuadorean men who have been tortured by criminal gangs for resisting gang recruitment" comprise a distinct group with very clear boundaries which may be qualitatively and quantitatively defined within the society in question.

In *Matter of S-E-G-*, the BIA rejected the idea that "Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang based on their personal, moral, and religious opposition to the gang's values and activities" was a particular social group. 24 I.&N. Dec. at 579. Again, the situation in the present case goes far beyond moral resistance to gang activity but goes to the depths of some of the most severe forms of physical and psychological coercion. While it may be true that those with moral or religious-based abhorrence of gangs and gang activity may be widespread and non-cognizable in the context of Ecuadorean society, those who have been physically tortured because of their resistance to gangs surely compose a particularized and cognizable group.

III. The Proposed PSG is socially distinct within Ecuadorean society.

The BIA has held that evidence like country conditions reports, expert testimony, press coverage of discriminatory laws and policies of the asylee's country of origin, and historical context and animosities all "may establish that a group exists and is perceived as 'distinct' or other in a particular society." *Matter of M-E-V-G-*, 26 I&N Dec. at 244. In that same case, it was held that an asylee's characteristics "need not involve literal or 'ocular' visibility," to be considered distinct within the society and that "[s]ome distinctions are based on beliefs and characteristics that are largely internal." *Id*. at 236.

In *Hernandez-Martinez v. Garland*, the First Circuit held that the purported particular social group of "business owners in Guatemala who have a high profit" was insufficiently distinct within Guatemalan society to qualify as a particular social group. 59 F.4th 33, 37 (1st Cir. 2023). The Respondent there was cut with a knife, had his right foot burned on a motorcycle exhaust pipe, and beaten senseless when he refused to give the gang members the money they wished to extort from him. *Id*. Immediately after that incident, the Petitioner fled to the United States. *Id*. In that

case, the court reasoned that, "[t]here was no evidence that Guatemalan society perceives, considers, or recognizes 'business owners in Guatemala who have a high profit' as a distinct social group." *Id*. While the Petitioner in that case faced violence at the hands of "police-aided extortioners," there was little indication in that case that he would have faced any future threats or that he was specifically targeted by those individuals. *Id*. The purported asylum claim there was based on a single instance of monetary extortion and it was unclear whether any follow up extortion or targeted violence would have occurred. *Id*. The First Circuit's rejection of the asylum claim in that case was also in part due to the amorphous nature of wealth based PSGs which the Court said lacked distinction in Guatemalan society. *Id*. at 39.

Unlike in *Hernandez-Martinez*, the Respondent in the present case faced systemic threats, beatings, and torture at the hands of the gang members and a police officer that were not simply random violent acts. This pattern of repeated threats and torture in rapid succession, along with the Respondent's position as a potentially valuable recruit due to his security and military background, evinces a motivation to persecute him as a distinct target within the larger Ecuadorean society. The Respondent here had the qualities of both "ocular visibility" (as a uniformed security guard and former military) and "internal" immutable characteristics (the past experience of having been tortured by gang members) that made him, and those similarly situated, distinct within the society in question.

4. Country conditions evidence supports Respondent's assertion that the Government of Ecuador is not willing or able to control members of the Los Choneros gang.

"[P]ersecution 'always implies some connection to government action or inaction.'" *Rebenko v. Holder*, 693 F.3d 87, 92 (1st Cir. 2012) (*quoting Harutyunyan v. Gonzales*, 421 F.3d 64, 68 (1st Cir. 2005)). To qualify for asylum or withholding of removal, the Respondent must show that the harm was "perpetrated by the government itself *or* by a private actor that the

government is unwilling or unable to control." *Aguilar-Escoto v. Garland*, 59 F.4th 510, 518 (1st Cir. 2023) (emphasis added). The Respondent need not prove both, but only that the foreign government showed "either unwillingness or inability" to protect the Respondent from the harm. *Justo v. Sessions*, 89 F.3d 154, 163 (1st Cir. 2018) (underline in original); *see also Khattak v. Holder*, 704 F.3d 197, 206 (1st Cir. 2013) ("although such military action indicates that the Pakistani government is willing to take on the Taliban, such action does not show that the Pakistani government is able to protect its citizens from Taliban attacks.") (underline in original). The country conditions evidence presented gives us a clear picture of the extent of the Ecuadorean government's unwillingness and inability to control the type of criminal gangs who targeted the Respondent.

Recent reporting has found that criminal gang activity has become so ubiquitous in certain areas of Ecuador that some criminal gangs are moving their operations in Europe to Ecuador because of the ease of operating there.[4] The year 2022 was the single bloodiest year on record for Ecuadorean criminal violence, with 468 people killed between January and February alone (an increase from 191 killed the previous year). As of January 2023, only 41% of Ecuadoreans have confidence in the local police to protect them and a paltry 24% have confidence in the judiciary.[5] Recently in Esmeraldas and Guayas provinces, cartels have blown up cars and buildings and even assassinated prominent politicians who resisted criminal enterprises, prompting the Ecuadorean Defense Minister to admit as recent as April of 2023, "We do not deny that we are in the worst moment of violence in the country…."[6]

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[4] *Western Balkans criminal groups are contributing to drug-related violence in Ecuador*, GLOBAL INITIATIVE AGAINST ORGANIZED CRIME (Feb. 2023), https://riskbulletins.globalinitiative.net/see-obs-014/02-western-balkans-criminal-groups-contributing-to-drug-related-violence.html

[5] Benedict Vigers, *Ecuador: The Most Dangerous Country in Latin America?*, GALLUP (Jan. 20, 2023), https://news.gallup.com/poll/468227/ecuador-dangerous-country-latin-america.aspx.

[6] Dan Collyns, *Ecuador's criminal gangs bring death and mayhem amid political gridlock*, THE GUARDIAN (Apr. 23, 2023), https://www.theguardian.com/world/2023/apr/23/ecuador-violence-guayaquil-guillermo-lasso.

Christopher Amaral- Writing Sample

In *Troche v. Garland*, the court held that an asylum applicant was ineligible for asylum status because he had failed to show that the government of Honduras was unable or unwilling to protect him as he "would constantly get assaulted and beaten" for wearing women's clothing. 15 F.4th 559, 562 (1st Cir. 2021). The court stated that the Respondent in that cased failed to show an inability or unwillingness to help him was in part because "there [was] insufficient evidence in [the] record to establish that the respondent ever reported any incidents in the past to the police." *Id*. The circumstances in the present case are distinguishable from *Troche* because, unlike in that case, here the Respondent had no reasonable expectation that the police would help and protect him. In the present case, one of the Respondent's abductors and torturers was a uniformed member of the local police. It is reasonable to conclude that the participation of a police sergeant, one who may have influence and authority over subordinate officers, in the abduction, beating, and torture of the Respondent would lead him to believe that going to the police would not help and might even prove dangerous.

While criminal activity may be worse in certain areas of Ecuador than others, relocating to another area would not likely prevent the Respondent from suffering future persecution at the hands of the Los Choneros gang, allied gangs, or corrupt members of law enforcement or judiciary under their influence. The First Circuit has held that "the possibility of internal relocation will only defeat an asylum claim where the applicant could also 'avoid [future] persecution by relocating.'" *Khattak*, 704 F.3d at 207; 8 C.F.R. § 208.13(b)(2)(C)(ii); *see also Cendrawasih v. Holder*, 571 F.3d 128, 131 (1st Cir. 2009).

In *Burbiene v. Holder*, the court held that the Petitioner had not presented "reasonable, substantial, and probative evidence" in support of her claim that the government of Lithuania was unwilling or unable to control the problem of human trafficking and thus could not protect her

against being forced into prostitution. 568 F. 3d 251, 255 (1st Cir. 2009). The court cited country reports which showed Lithuania had enacted stricter laws combatting human trafficking, had created new police task forces for that purpose, and had participated in a large undercover operation that rescued nearly 100 young girls and women from being trafficked. *Id*. The court agreed with the Immigration Judge's statement that Lithuania was "making every effort to combat human trafficking." *Id*. That is not the situation here. Even among neighboring countries who struggle with gang violence, Ecuador has been dubbed the worst in terms of its efforts to combat those gangs. A former Ecuadorean director of military intelligence admitted to the press in April of 2023 that "[a] process of urban terrorism has been unleashed," and that the "government has lost control of this crisis."[7] While the First Circuit has asserted that "[s]cattered incidences of violence or harassment are not enough to establish that a government is unwilling or unable to control violence," the intensity of gang violence, seen both as a whole across Ecuador individually in the case of the Respondent in this case, demonstrate a systemic inability to control them. *Id.* at 255. [End of Argument Excerpt]

IV. CONCLUSION

For the reasons provided above, Respondent respectfully requests that the Court grant his application for asylum. In the alternative, he should be granted withholding of removal under the INA or, alternatively, withholding of removal under CAT.

[7] Collyns, *supra* note 6.

Applicant Details

First Name	**Peter**
Middle Initial	**J**
Last Name	**Amato**
Citizenship Status	**U. S. Citizen**
Email Address	**pamato2@nd.edu**
Address	**Address** Street **1722 Winston Drive** City **South Bend** State/Territory **Indiana** Zip **46635** Country **United States**
Contact Phone Number	**6314563957**

Applicant Education

BA/BS From	**James Madison University**
Date of BA/BS	**May 2017**
JD/LLB From	**Notre Dame Law School** **http://law.nd.edu**
Date of JD/LLB	**May 18, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Journal of Legislation**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Alford, Roger
ralford@nd.edu
(574) 631-3771
Garnett, Nicole
Nicole.Garnett.5@nd.edu
574-631-3091
O'Connell, Mary Ellen
MaryEllenOConnell@nd.edu
574-631-7953

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse, 600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at Notre Dame Law School. I am writing to apply for a clerkship in your chambers beginning in 2024.

Enclosed please find my resume, law school and undergraduate transcripts, and writing sample. You will receive letters of recommendation from the following people. In the meantime, they would welcome the opportunity to discuss my candidacy with you.

Prof. Nicole Stelle Garnett	Prof. Mary Ellen O'Connell	Prof. Roger P. Alford
Notre Dame Law School	Notre Dame Law School	Notre Dame Law School
ngarnett@nd.edu	maryellenoconnell@nd.edu	ralford@nd.edu
(574) 631-3091	(574) 631-7953	(574) 631-3771

If I can provide additional information that would be helpful to you, please let me know. Thank you for your consideration.

Respectfully,

Peter J. Amato

Peter J. Amato

1722 Winston Drive South Bend, Indiana 46635
(631) 456-3957 | pamato2@nd.edu

EDUCATION

University of Notre Dame Law School, Notre Dame, IN — May 2024
Juris Doctor Candidate
GPA: 3.525
Awards: Dublin Honor Scholars Program, Honor Roll (Spring 2022, Fall 2022)
Activities: LGBT Law Forum, International Law Society, JOURNAL OF LEGISLATION (Executive Articles Editor, vol. 50)
Publications: Note, *Re-Imagining the Post-9/11 Authorizations for Use of Military Force (AUMFs) in the Era of Emerging Consensus on Reform*, 50 J. LEGIS. (forthcoming 2023)

James Madison University, Harrisonburg, VA — May 2017
Bachelor of Arts (*B.A.*), International Affairs, minor in Theatre (*cum laude*)
GPA: 3.600
Awards: Dean's List (Fall 2014, Spring 2015, Fall 2015, Fall 2016), President's List (Spring 2017)
Activities: Student Ambassador, Alternative Break Program Leader, Orientation

EXPERIENCE

White & Case LLP, New York, NY — May 2023–July 2023
Summer Associate
- Orchestrate legal memorandums pertaining to international arbitration and commercial litigation matters that assist partners and senior associates in developing compelling arguments for clients.

Whitney Moore LLP, Dublin, Ireland — May 2022–July 2022
Legal Intern
- Selected as a Dublin Honor Scholar, following a competitive application process, which provides full funding for travel, expenses, and compensation to intern at a leading Irish law firm.
- Assisted partners and associates on transactional and litigation legal services by conducting research, drafting and editing court filings, and establishing strong connections with existing and prospective clients.

TransPerfect, New York, NY — November 2020–August 2021
Project Coordinator
- Executed and facilitated numerous high-quality language translations of life science documents, including ongoing COVID-19 research, by liaising between the sales team and individual linguists.
- Oversaw the integrity of the translation process by negotiating the allocation of project budget, establishing timelines, troubleshooting during the project life cycle, and meticulously vetting translation quality.

Peace Corps, Africa Region
Community Health and Sanitation Facilitator (Ghana) — January 2018–March 2020
- Managed a $6,000 infrastructure grant project that provided latrines to twenty-two households, producing a marked improvement in community sanitation and a reduction in diarrheal disease cases.
- Organized a series of community-wide, nutrition-based lessons that focused on teaching Ghanaians how to fortify traditional recipes with locally available, affordable food items to improve their nutrition.
- Spearheaded a conference for health facilitators that disseminated nutrition education through hands-on demonstrations.
- Advocated for and established diversity training courses that addressed the challenges and benefits of inclusion and subsequently improved working relationships within Peace Corps Ghana.

Community Health Educator (Burkina Faso) — June–September 2017
- Coordinated health awareness campaigns in rural Burkina Faso, which resulted in increased adoption of malaria prevention techniques and safe reproductive health practices.

Orientation Office, **James Madison University**, Harrisonburg, VA — August 2015–September 2016
Orientation Peer Advisor
- Served on a team that mentored and equipped over 5,000 incoming students with skills to adjust successfully to the social and academic responsibilities of college.
- Trained and supervised ten First-Year Orientation Guides in their role as mentors and support systems for incoming students.

First-Year Orientation Guide
- Counseled and mentored thirty-two incoming college students to develop productive academic and social goals throughout the duration of their first year at James Madison University.

LANGUAGE SKILLS

Italian (limited proficiency); French (limited proficiency); Dagbani (Ghanaian language) (limited proficiency)

UNIVERSITY OF NOTRE DAME NOTRE DAME, INDIANA 46556

Amato, Peter J.
Student ID: XXXXX7227

Date Issued: 09-JUN-2023
Page: 1

Birth Date: 09-08-XXXX

Issued To: Peter Amato
Parchment DocumentID: TWB7KO6J
pamato2@nd.edu

Course Level: Law
Program: Juris Doctor
College: Law School
Major: Law

CRSE ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA	OVERALL TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA
UNIVERSITY OF NOTRE DAME CREDIT:												
Fall Semester 2021												
Law School												
LAW 60105	Contracts	4.000	B+	13.332								
LAW 60302	Criminal Law	4.000	B+	13.332								
LAW 60703	Legal Research	1.000	B+	3.333								
LAW 60705	Legal Writing I	2.000	A-	7.334								
LAW 60901	Torts	4.000	B+	13.332								
		Total		50.663	15.000	15.000	15.000	3.378	15.000	15.000	15.000	3.378
Spring Semester 2022												
Law School												
LAW 60307	Constitutional Law	4.000	A	16.000								
LAW 60308	Civil Procedure	4.000	A-	14.668								
LAW 60707	Legal Resrch & Writing II-MC	1.000	A-	3.667								
LAW 60906	Property	4.000	B+	13.332								
LAW 70401	International Law	3.000	B+	9.999								
		Total		57.666	16.000	16.000	16.000	3.604	31.000	31.000	31.000	3.494
Honor Roll												
Fall Semester 2022												
Law School												
LAW 70313	Law of Education	2.000	A	8.000								
LAW 70315	Administrative Law	3.000	B+	9.999								
LAW 70812	Jurisprudence	3.000	B+	9.999								
LAW 73372	Federalism Seminar	3.000	A	12.000								

CONTINUED ON PAGE 2

UNIVERSITY OF NOTRE DAME NOTRE DAME, INDIANA 46556

Amato, Peter J.
Student ID: XXXXX7227

Birth Date: 09-08-XXXX

Date Issued: 09-JUN-2023

CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA	OVERALL TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA
University of Notre Dame Information continued:													
LAW	73717	Transnational Civil Litigation	3.000	A-	11.001								
LAW	75753	Journal of Legislation	1.000	S	0.000								
			Total		50.999	15.000	15.000	14.000	3.643	46.000	46.000	45.000	3.541
Honor Roll													
Spring Semester 2023													
Law School													
LAW	70101	Business Associations	4.000	B+	13.332								
LAW	70305	Constitutional Law II	3.000	B	9.000								
LAW	70317	Local Government Law	3.000	A-	11.001								
LAW	73402	Art & Cultural Heritage Law	2.000	A	8.000								
LAW	73830	Military Justice System Sem	2.000	A-	7.334								
LAW	75753	Journal of Legislation	1.000	S	0.000								
			Total		48.667	15.000	15.000	14.000	3.476	61.000	61.000	59.000	3.525
Fall Semester 2023													
IN PROGRESS WORK													
LAW	70311 M	Federal Courts	3.000	IN PROGRESS									
LAW	70726 M	Applied Mediation	5.000	IN PROGRESS									
LAW	70808 M	Legal Ethics: Prof. R Examined	3.000	IN PROGRESS									
LAW	73301 M	State Constitutional Law	2.000	IN PROGRESS									
LAW	73428 M	Intl Law and Use of Force	2.000	IN PROGRESS									
LAW	75753 M	Journal of Legislation	1.000	IN PROGRESS									
		In Progress Credits	16.000										

********** TRANSCRIPT TOTALS **********

NOTRE DAME	Ehrs:	61.000	QPts:	207.995
	GPA-Hrs:	59.000	GPA:	3.525
TRANSFER	Ehrs:	0.000	QPts:	0.000
	GPA-Hrs:	0.000	GPA:	0.000
OVERALL	Ehrs:	61.000	QPts:	207.995
	GPA-Hrs:	59.000	GPA:	3.525

********** END OF TRANSCRIPT **********

[redacted]

All courses taught at an off campus location will have a campus code listed before the course title.
The most frequently used codes are:

AF	Angers, France
DC	Washington, DC
FA	Fremantle, Australia
IA	Innsbruck, Austria
IR	Dublin, Ireland
LA	London, England (Fall/Spring)
LE	London, England (Law-JD)
LG	London, England (Summer EG)
LS	London, England (Summer AL)
PA	Perth, Australia
PM	Puebla, Mexico
RE	Rome, Italy
RI	Rome, Italy (Architecture)
SC	Santiago, Chile
SP	Toledo, Spain

For a complete list of codes, please see the following website:
http://registrar.nd.edu/pdf/campuscodes.pdf

GRAD[redacted]

Previous grading systems as well as complete explanations are available at the following website:
http://registrar.nd.edu/students/gradefinal.php

August 1988 - Present

Letter Grade	Point Value	Legend
A	4	
A-	3.667	
B+	3.333	
B	3	
B-	2.667	
C+	2.333	
C	2	Lowest passing grade for graduate students.
C-	1.667	
D	1	Lowest passing grade for undergraduate students.
F	0	Failure
F*	0	No final grade reported for an individual student (Registrar assigned).
X	0	Given with the approval of the student's dean in extenuating circumstances beyond the control of the student. It reverts to "F" if not changed within 30 days after the beginning of the next semester in which the student is enrolled.
I	0	Incomplete (reserved for advanced students in advanced studies courses only). It is a temporary and unacceptable grade indicating a failure to complete work in a course. The course work must be completed and the "I" changed according to the appropriate Academic Code.
U		Unsatisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).

Grades which are not Included in the Computation of the Average

S	Satisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).
V	Auditor (Graduate students only).
W	Discontinued with permission. To secure a "W" the student must have the authorization of the dean.
P	Pass in a course taken on a pass-fail basis.
NR	Not reported. Final grade(s) not reported by the instructor due to extenuating circumstances.
NC	No credit in a course taken on a pass-no credit basis.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

THE LAW SCHOOL GRADING SYSTEM

The current grading system for the law school is as follows: A (4.000), A- (3.667), B+ (3.333), B (3.000), B- (2.667), C+ (2.333), C (2.000), C- (1.667), D (1.000), F or U (0.000).

Effective academic year 2011-2012, the law school implemented a grade normalization policy, with mandatory mean ranges (for any course with 10 or more students) and mandatory distribution ranges (for any course with 25 or more students). For Legal Writing (I & II) only, the mean requirement will apply but the distribution requirement will not apply. The mean ranges are as follows: for all first-year courses (except for the first-year elective, which is treated as an upper-level course), the mean is 3.25 to 3.30; for large upper-level courses (25 or more students), the mean is 3.25 to 3.35; for small upper-level courses (10-24 students), the mean is 3.15 to 3.45.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

TRANSCRIPT NOT OFFICIAL IF WHITE SIGNATURE AND BLUE SEAL ARE DISTORTED

CHUCK HURLEY, UNIVERSITY REGISTRAR

In accordance with USC 438 (6) (4) (8) (The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without the written consent of the student. Alteration of this transcript may be a criminal offense.

[redacted]M

Previous course numbering systems (prior to Summer 2005) are available at the following website:
http://registrar.nd.edu/faculty/course_numbering.php

Beginning in Summer 2005, all courses offered are five numeric digits long (e.g. ENGL 43715).
The first digit of the course number indicates the level of the course.

ENGL 0 X - XXX = Pre-College course
ENGL 1 X - XXX = Freshman Level course
ENGL 2 X - XXX = Sophomore Level course
ENGL 3 X - XXX = Junior Level course
ENGL 4 X - XXX = Senior Level course
ENGL 5 X - XXX = 5th Year Senior / Advanced Undergraduate Course
ENGL 6 X - XXX = 1st Year Graduate Level Course
ENGL 7 X - XXX = 2nd Year Graduate Level Course (MBA / LAW)
ENGL 8 X - XXX = 3rd Year Graduate Level Course (MBA / LAW)
ENGL 9 X - XXX = Upper Level Graduate Level Course

JAMES MADISON UNIVERSITY

Harrisonburg, Virginia 22807

Issued to student in sealed envelope

Official Transcript

Institution Info: James Madison University
South Main Street
Harrisonburg, VA 22807
United States

Name: Amato,Peter James
Student ID: 108996940
Address: 4 Glen Drive
Lake Ronkonkoma, NY 11779
United States

Print Date: 06/07/2017

Degrees Awarded

Degree: Bachelor of Arts
Confer Date: 05/06/2017
Degree Honors: Cum Laude
Plan: Major in International Affairs
Sub-Plan: Concentration in International Relations
Plan: Minor in Theatre

Academic Program

Program: Undergraduate
International Affairs - BA Major
International Relations Concentration
Theatre Minor

Beginning of Undergraduate Record

Fall Semester 2013

Course		Description	Attempted	Earned	Grade	Points
CHEM	131	GENERAL CHEMISTRY I	3.00	3.00	B-	8.100
CHEM	131L	GENERAL CHEMISTRY LAB	1.00	1.00	C	2.000
GAMST	200	INTRO TO AMERICAN STUDIES	3.00	3.00	A	12.000
GCOM	123	FUND HUMAN COMM: GROUP PRES	3.00	3.00	B+	9.900
GSOCI	110	SOCIAL ISSUES GLOBAL CONTEXT	3.00	3.00	B	9.000
MATH	220	ELEM STATISTICS	3.00	3.00	B	9.000

Test Credits Applied Toward Undergraduate

Course		Description	Attempted	Earned	Grade	Points
GHIST	225	U.S. HISTORY	0.00	4.00	CR	0.000
GPOSC	225	U.S. GOVERNMENT	0.00	4.00	CR	0.000
GPSYC	101	GENERAL PSYCHOLOGY	0.00	3.00	CR	0.000
GSCI	101	PHYS CHEM & HUMAN EXP	0.00	3.00	CR	0.000
GSCI	104	SCIENTIFIC PERSPECTIVES	0.00	1.00	CR	0.000

Test Trans GPA: 0.000 Transfer Totals: 0.00 15.00 0.000

	Attempted	Earned	Points
Term GPA 3.125 Term Totals	16.00	16.00	50.000
Cum GPA 3.125 Cum Totals	16.00	31.00	50.000

Academic Good Standing

Spring Semester 2014

Course		Description	Attempted	Earned	Grade	Points
GPHIL	120	CRITICAL THINKING	3.00	3.00	C+	6.900
GPSYC	160	LIFE SPAN HUMAN DEV	3.00	3.00	B+	9.900
GWRTC	103	CRITICAL READING AND WRITING	3.00	3.00	A	12.000
ITAL	231	INTERMEDIATE ITALIAN I	3.00	3.00	A	12.000
POSC	230	INTERNATIONAL RELATIONS	3.00	3.00	A-	11.100

	Attempted	Earned	Points
Term GPA 3.460 Term Totals	15.00	15.00	51.900
Cum GPA 3.287 Cum Totals	31.00	46.00	101.900

Academic Good Standing

Fall Semester 2014

Course		Description	Attempted	Earned	Grade	Points
ECON	201	PRIN OF ECON (MICRO)	3.00	3.00	B	9.000
HIST	330	US DIPLOMATIC HISTORY	3.00	3.00	A	12.000
ITAL	232	INTERMEDIATE ITALIAN II	3.00	3.00	A	12.000
PHIL	385	BUDDHIST THOUGHT	3.00	3.00	A	12.000
POSC	240	COMPARATIVE POLITICS	3.00	3.00	A-	11.100

	Attempted	Earned	Points
Term GPA 3.740 Term Totals	15.00	15.00	56.100
Cum GPA 3.434 Cum Totals	46.00	61.00	158.000

Term Honor: Dean's List
Academic Good Standing

Spring Semester 2015

Course		Description	Attempted	Earned	Grade	Points
GECON	200	INTRO MACROECONOMICS	3.00	3.00	B	9.000
GHIST	102	WORLD HISTORY SINCE 1500	3.00	3.00	A	12.000
GHUM	200	GREAT WORKS	3.00	3.00	A	12.000
Topic:		CONTEMPLATIVE TRADITIONS				
ITAL	300	GRAMMAR AND COMMUNICATION	3.00	3.00	A	12.000
POSC	370	U.S. FOREIGN POLICY	3.00	3.00	A-	11.100

	Attempted	Earned	Points
Term GPA 3.740 Term Totals	15.00	15.00	56.100
Cum GPA 3.509 Cum Totals	61.00	76.00	214.100

Term Honor: Dean's List
Academic Good Standing

Fall Semester 2015

Course		Description	Attempted	Earned	Grade	Points
HIST	361	CLASS AND ETHNICITY IN AFRICA	3.00	3.00	B+	9.900
ITAL	320	ORAL AND WRITTEN COMMUNICATION	3.00	3.00	A-	11.100
ITAL	375	BUSINESS & SOCIETY IN ITALY	3.00	3.00	A	12.000
POSC	395	INTERNATIONAL LAW	3.00	3.00	B	9.000
THEA	210	INTRODUCTION TO THEATRE	3.00	3.00	A	12.000

	Attempted	Earned	Points
Term GPA 3.600 Term Totals	15.00	15.00	54.000
Cum GPA 3.527 Cum Totals	76.00	91.00	268.100

Term Honor: Dean's List
Academic Good Standing

Spring Semester 2016

Course		Description	Attempted	Earned	Grade	Points
ECON	270	INTERNATIONAL ECONOMICS	3.00	3.00	B	9.000
GEOL	115	EARTH SYSTEMS & CLIMATE CHANGE	3.00	3.00	A-	11.100
HRD	100	HUMAN RESOURCE DEV LEADER LAB	2.00	2.00	A	8.000
INTA	295	CROSS-NATIONAL RESEARCH SKILLS	4.00	4.00	B-	10.800
POSC	371	TOPICS IN COMPARATIVE POLITICS	3.00	3.00	A	12.000
Topic:		DEV & THE ENVIRON IN AFRICA				
THEA	273	DESIGN ASPECTS OF PERFORMANCE	3.00	3.00	B+	9.900

	Attempted	Earned	Points
Term GPA 3.377 Term Totals	18.00	18.00	60.800
Cum GPA 3.498 Cum Totals	94.00	109.00	328.900

Academic Good Standing

Fall Semester 2016

Course		Description	Attempted	Earned	Grade	Points
INTA	489	SENIOR SEMINAR IN INTL AFFAIRS	4.00	4.00	A-	14.800
KIN	100	LIFETIME FITNESS & WELLNESS	3.00	3.00	A	12.000
Topic:		SWIM CONDITIONING				
THEA	251	ACTING I: BASIC ACTING	3.00	3.00	A	12.000
THEA	332	COSTUME AND FASHION HISTORY	3.00	3.00	A-	11.100
THEA	347	PLAYWRITING	3.00	3.00	A	12.000
UNST	250	ALT BREAK LEADERSHIP TRAINING	1.00	1.00	A	4.000

	Attempted	Earned	Points
Term GPA 3.876 Term Totals	17.00	17.00	65.900
Cum GPA 3.556 Cum Totals	111.00	126.00	394.800

Term Honor: Dean's List
Academic Good Standing

Spring Semester 2017

Course		Description	Attempted	Earned	Grade	Points
JUST	375	GENOCIDE IN THE 20TH CENTURY	3.00	3.00	A	12.000
POSC	458	INTER POLITICAL ANALYSIS	3.00	3.00	A	12.000
THEA	303	TOPICS IN THEATER	3.00	3.00	A	12.000
Topic:		COMMUNITY BASED THEATRE				
THEA	355	DIRECTING FOR THEATRE	3.00	3.00	A	12.000
UNST	251	ALT BREAK LEADERSHIP PRACTICUM	0.00	1.00	CR	0.000

	Attempted	Earned	Points
Term GPA 4.000 Term Totals	12.00	13.00	48.000
Cum GPA 3.600 Cum Totals	123.00	139.00	442.800

Term Honor: President's List
Academic Good Standing

Undergraduate Career Totals

	Attempted	Earned	Points
Cum GPA 3.600 Cum Totals	123.00	139.00	442.800

Non-Course Milestones

GenEd Research Essential Skills Test Proficient
Status: Completed
Milestone Level: MREST Proficient
Milestone Title: Gened MREST Proficient

End of Official Transcript

This officially sealed and signed transcript is printed on purple SCRIP-SAFE® security paper with the name of the university printed in white type across the face of the document. A raised seal is not required. An official signature is white with a purple background. Reject document if signature is distorted. A BLACK AND WHITE OR COLOR COPY SHOULD NOT BE ACCEPTED

Michele M. White, University Registrar

Notre Dame Law School
1100 Eck Hall of Law
Notre Dame, IN 46556

June 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to strongly recommend PJ Amato as a judicial law clerk in your chambers. PJ was a student in my Constitutional Law and Transnational Civil Litigation classes. Based on his performance in my classes I can confidently assess PJ's abilities as a judicial law clerk.

PJ is an exceptional writer. He has a thorough grasp of the material and writes with confidence and clarity. His paper for my Transnational Civil Litigation class was on the topic of foreign sovereign immunity and the terrorism exception that would hold state sponsors of terrorism liable in United States courts for terrorist attacks. He contributes significantly to classroom discussion and offers thoughtful reflections on the material. Based on his paper and class participation he scored one of the highest scores in the class.

I have spoken with PJ on numerous occasions about his past as a Peace Corps volunteer, and his career objectives. I have every confidence that he would be an exceptional judicial law clerk. He is extremely intelligent, confident, and interesting. He has a keen sense of responsibility and will fulfill every task assigned to him with professionalism and excellence. He is extremely interesting in private conversation, and is the kind of person with whom working in close quarters over the course of many days would be a pleasure. I strongly recommend that you interview him.

Please do not hesitate to contact me if you have further questions. You can reach me on my cell at 310-729-3924.

Sincerely,

Roger Alford
Professor of Law
Notre Dame Law School

Roger Alford - ralford@nd.edu - (574) 631-3771

Notre Dame Law School
1100 Eck Hall of Law
Notre Dame, Indiana 46556

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Peter (PJ) Amato

Dear Judge Walker:

I am writing to recommend Peter ("P.J.") Amato for a clerkship in your chambers. I am a big fan of P.J.'s, and I am confident that he will be an excellent law clerk. I hope that you give him serious consideration.

P.J. grew up on Long Island, and attended James Madison University. After college, he spent two years serving in the Peace Corps in Ghana, a testament to his commitment to serving others. During the Peace Corps, he decided for certain to go to law school because he wanted to pursue a career that allowed him to critically think to help solve other people's problems. He describes the law as his "passion."

P.J. has been a student in two of my classes. He took my seminar on the Law of Education during the Fall 2022 semester. I give the students the option of writing either multiple short papers or one long research paper. He opted for the former, and his papers were well written and interesting. In one paper, he examined the (possible) constitutional protections under 1A for non-conforming or transgender students to dress in line with their gender identity. In another, he analyzed the "waves" of school funding litigation, tracing the history of the litigation process and proposed that we might be entering a fourth wave, where courts are race and class conscious. Although I did not necessarily agree with his view, I thought the papers were excellent. He received one of two "A" grades that I awarded in the class. During class discussions, he was always willing to question his own assumptions, and willing to respectfully challenge others' views. Both were important in a class that covered many hot-button issues (including race, sex and gender-identity, free speech, and religion).

Last semester, P.J. took my Local Government Law class. Again, he was a standout in class discussions. It was clear that he was very engaged by the material, and he would occasionally email me articles about various local government disputes throughout the country. He earned an A- in the class.

I thoroughly enjoy interacting with P.J. It would be difficulty to put it more accurately than to say that he's just a really good guy. Again, although we have different political views on some issues, I've found him to be consistently fair and thoughtful. He's willing to engage in respectful disagreement, which is something we need more of in our legal culture. I know that you'd enjoy having him in chambers for a year.

I very much appreciate your consideration of P.J.'s application. Please let me know if I can assist your evaluation of his candidacy. I am available by phone at 574-261-0628 and email at ngarnett@nd.edu.

Respectfully.

Nicole Stelle Garnett
John P. Murphy Foundation Professor of Law

Notre Dame Law School
1100 Eck Hall of Law
Notre Dame, IN 46556

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Peter (PJ) Amato, a highly-accomplished member of Notre Dame Law School's class of 2024. PJ has all of the attributes to become an excellent clerk. What I find sets him apart from other well-qualified candidates is his engaging personality.

PJ was a student in my advanced seminar on Art & Cultural Heritage Law. All members of the course had a prior course in international law, so that we could take up the most complex issues in the field. We considered such cutting-edge topics as in-kind reparations for Ukraine; First Amendment rights of climate protestors at art museums; whether AI-generated work qualifies as "art" for copyright and other purposes, and what transactions qualify as a "forced sale" under Holocaust art claims jurisprudence. PJ selected a topic on copyright law, the case of *The Andy Warhol Foundation v. Goldsmith*. The case was being decided by the Supreme Court while we studied it. I added a consideration of the international copyright issues involved in the case under the Berne Convention on international copyright protection. Members of the class are required to present their case study as in a moot court exercise, deliberate and decide the outcomes of their classmates' moot presentations and submit a final paper.

PJ excelled at all of the components of the course. He is highly intelligent as his GPA indicates, but I also saw his intellectual depth in his immediate grasp of the complex issues in his assigned case study. PJ is also a talented writer, presenting in clear and accurate prose the applicable law and the latest theories of interpretation. His research was thorough and accurate. His talent as a writer is confirmed by the fact he will be a member of one of our journal boards next year.

In the art law seminar, PJ worked in a team in the moot court presentations, so I had an opportunity to see that he works extremely well with others. He has many friends at Notre Dame and is taking on leadership roles as he enters his 3L year. PJ's oral presentation in class was erudite and persuasive. He consistently contributed exceptional insights on highly abstract concepts in every class discussion. Given all of these qualifications, as well as his proven dedication to serving others, and his affinity for people, I expect PJ to have a brilliant legal career. I am confident that he will use all that he learns as a judicial clerk for the good of his clients and society in general.

Notre Dame is a place that encourages public service in the interest of others. PJ has already served as a Peace Corps volunteer, so it is little wonder that he was attracted to this Law School and service as a judicial clerk. I hope you will give him the opportunity to serve in this role and to bring his impressive abilities and engaging personality to your chambers.

Sincerely,

Mary Ellen O'Connell, JD, PhD
Robert and Marion Short Chair in Law
and Professor of International Peace Studies—Kroc Institute

Mary Ellen O'Connell - MaryEllenOConnell@nd.edu - 574-631-7953

Peter J. Amato

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WRITING SAMPLE

This writing sample, based on my independent research, is an excerpt from an appellate brief I wrote for my first-year legal writing class in the spring semester of 2022. Professor Leslie D. Callahan provided brief feedback on a previous draft, and this version was self-edited to incorporate her suggestions.

By way of background, this assignment tasked me with representing the government as an appellate attorney endeavoring to uphold the conviction of a fictional Defendant, Mr. Preston, following his conviction for possessing and selling an illicit substance. As the attorney for the government, I argued that the witness identification provided by Mr. Martin was properly admitted into evidence, as it did not create a substantial likelihood of misidentification. Mr. Martin allegedly bought an illicit substance from Mr. Preston, and when he was subsequently caught with said substance, he was advised to cooperate with investigators. Mr. Martin identified Mr. Preston, in a photographic array prepared by investigators, as the person who sold him the illicit substance. Mr. Preston appealed his conviction, arguing that the identification provided by Mr. Martin violated his Fifth Amendment rights. I drafted this brief in response to that issue presented on appeal.

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS IDENTIFICATION EVIDENCE BECAUSE THE PROCEDURE USED INCLUDED A PHOTOGRAPH LINEUP AND POLICE CONDUCT THAT DID NOT SINGLE OUT OR ISOLATE AN INDIVIDUAL AND THE WITNESS IS RELIABLE AS HE HAD ADEQUATE OPPORTUNITY TO VIEW DEFENDANT AND PROVIDED AN ACCURATE PRIOR DESCRIPTION OF DEFENDANT.

The trial court properly denied Defendant's Motion to Suppress Identification Evidence because the identification procedures employed did not create a substantial likelihood of misidentification, which would violate the defendant's right to due process of law. A substantial likelihood of misidentification is established by satisfying a two-pronged test. *Manson v. Brathwaite*, 432 U.S. 98 (1977). First, the court must determine if the police identification procedure was unduly suggestive. *Perry v. New Hampshire*, 565 U.S. 228 (2012). Undue suggestiveness arises when police conduct isolates an individual during the identification procedure, making their identification all but inevitable. *Id*. If the procedure is unduly suggestive, the identification is nevertheless admitted into evidence unless the identification is unreliable when considering the totality of the circumstances surrounding the identification; conditions that establish reliability include the witness's opportunity to view the suspect and the accuracy of the witness's prior description of the suspect. *Id*. Courts employ this two-pronged test to suppress only those identifications with a very substantial likelihood of misidentification, as the jury—the final arbiter of reliability in our criminal justice system—should weigh most evidence. *Id*. at 228.

Here, the trial court properly denied Defendant's Motion to Suppress Identification Evidence because the process was not unduly suggestive, as the police found participants that matched the general description of the suspect provided by the witness and did not single out a particular participant during the identification process. Alternatively, the motion was properly denied because even if the identification was unduly suggestive, it was reliable as the witness

had a close interaction with Defendant and subsequently provided an accurate description of Defendant.

A. The witness identification procedure employed by police to identify Defendant was not unduly suggestive.

The trial court properly denied Defendant's Motion to Suppress Identification Evidence because distinguishing features between the five individuals in the lineup did not serve as the nexus for identification. *United States v. Traeger*, 289 F.3d 461, 475 (7th Cir. 2002). Distinguishing features in a photo identification are suggestive only when they are noticed by the identifying witness and serve as the nexus for identification. *Id*. In that case, this Court affirmed the conviction of a bank robber identified by a witness during a police lineup in which he was the largest participant and the only one sporting an ankle restraint. *Id*. at 473. The bank robber, or "Mountain," stood at six feet, five inches tall, and weighed 350 pounds. The bank robber argued that the lineup was unduly suggestive and thus violated his right to due process of law since the other lineup participants were not of comparable build, and the ankle restraint that he alone wore identified him as the suspect. *Id*. This Court affirmed the robber's conviction, reasoning that the identification was not unduly suggestive, despite the noticeable difference in stature between the robber and the other participants, since police need only make reasonable efforts to conduct a balanced presentation and "need not find twins." *Id*. at 474. Additionally, this Court reasoned that the ankle restraint did not render the lineup unduly suggestive as the witness focused on the facial features of the participants and not the ankle restraint when identifying the bank robber. *Id*. at 475. Similarly, when a bank robber with a noticeably notched eyebrow was the sole lineup participant displaying that distinguishing feature – a feature that some of the witnesses described to police after the robbery – the identification procedure was not unduly suggestive, as the participants all generally conformed with each other and matched the description of the partially

masked robber provided to police. *United States v. Moore*, 115 F.3d 1348, 1360 (7th Cir. 1997), *reh'g denied*, 1997 U.S. App. LEXIS 18191 (7th Cir. 1997). This Court affirmed the robber with the notched eyebrow's conviction, reasoning that all the lineup participants had "at least some similar features" and the notched eyebrow did not serve as the focal point for identification; there, not all of the witnesses noted a notched eyebrow during their description of the robber, and none used it as the foundation for identification. *Id*. at 1360; *see also United States v. Galati*, 230 F.3d 254 (7th Cir. 2000) (witness identification of a bank robber was not unduly suggestive despite distinctions between the suspect and the others depicted, such as differences in hair length and age, as differences were not substantial).

Additionally, police conduct and comments during witness identification create undue suggestiveness only when it isolates or singles out a sole suspect, thus rendering identification all but inevitable. *United States v. Medina*, 552 F.2d 181, 189 (7th Cir. 1977). There, this Court upheld the lower court's conviction of a credit union robber, finding the identification not unduly suggestive despite police commenting before identification that the suspect was "out there" and that the witness "should be able to spot him." *Id*. at 190. The police made that comment after the witness expressed anxiety about the possibility of identifying an innocent man during the lineup. *Id*. This Court ruled that whenever lineups occur, an inference is made that the suspect may be present, and therefore, the comments that suggested the suspect was among those presented did not single out a particular individual. *Id*. Similarly, the police's apparent satisfaction following positive identification of the McDonald's robber, after said robber was the sole participant in successive photographic arrays, did not require suppression of the witness identification. *Gregory-Bey v. Hanks*, 332 F.3d 1036, 1046 (7th Cir. 2003), *cert. denied*, 540 U.S. 1052 (2003). In that case, this Court affirmed the lower court's conviction based on witness identification,

reasoning that the police conduct, which included numerous arrays with the robber alone depicted in each, did not raise a concern of irreparable misidentification as the arrays were separated by considerable time and were distinct in presentation. *Id.* This Court reasoned that there were more suggestive situations created by police that were nonetheless not unduly suggestive within this Court's precedent. *Id.* at 1047. Conversely, when a witness to the crime did not initially identify a suspected robber, the one-on-one conversation permitted between the leading suspect and the witness, which eventually served as a partial basis for identification, was unduly suggestive. *Foster v. California*, 394 U.S. 440, 441 (1969). There, the Court reversed the ruling of the federal appeals court, reasoning that the one-on-one interaction between the suspected robber and the witness, and numerous lineups where the robber was the sole repeated participant, rendered the identification procedure suggestive by making the selection of the suspected robber "all but inevitable." *Id.*

Here, the trial court's decision to deny the Motion to Suppress Identification Evidence should be affirmed as the identification procedures employed did not create an unduly suggestive scenario. First, distinguishing features between the participants in the photo array did not serve as the nexus for identification, as the witness relied solely on his memory of the individual to positively identify Defendant. The witness, Mr. Martin, stated that once he carefully reviewed the photo array, he was able to positively identify the individual who sold him the illicit drugs as the person in photograph number four—Defendant. Mr. Martin based his identification of Defendant solely on recognition of his physical features. Like the witness in *Traeger*, whose identification of the bank robber of unique stature and who wore an ankle restraint during the lineup was not unduly suggestive as neither served as the nexus for identification, Mr. Martin asserts that nothing in the photo array suggested a connection with Pi Sigma Sigma beyond the

fact that each of those depicted could have been plausible members of the fraternity. Mr. Martin never referred to the visible insignia as among the characteristics that drew him to select the photograph of Defendant as he was able to positively identify Defendant based on recall of Defendant's appearance rather than on the presence of the insignia. Furthermore, like the witnesses in *Moore*, whose identification of the bank robber with the notched eyebrow was not unduly suggestive, as each of the participants had at least some similar features, and none of the witnesses described the notched eyebrow as the nexus of their selection, Mr. Martin's identification of Defendant occurred within the confines of a five-person photo array where each of the participants possessed at least some similar features, as each could be described as a white, college-aged man with short brown hair. As distinguishing features did not serve as the nexus of identification and each of the participants possessed similar features, the identification procedure employed was not unduly suggestive.

Next, police comments and conduct were not unduly suggestive, as nothing in the procedure singled out or isolated one participant as the suspect, which would render the identification all but inevitable. Before positive identification, police did suggest to Mr. Martin that he should not fear the Pi Sigma Sigma men because they would all face consequences for their actions. Like the police comments in *Medina,* which included the statement that the suspected credit union robber was among those presented in the lineup and was nonetheless not unduly suggestive, police comments to Mr. Martin did not provide any new inferences that the person being selected was a member of that fraternity, as Mr. Martin already knew that the person who sold him drugs was a fraternity brother. Similarly, like the robber in *Gregory-Bey*, whose sole presence in more than one array of possible suspects was not unduly suggestive, the use of Defendant, and only Defendant, in two different forms of witness identification

procedures, in this case, does not render the identification unduly suggestive, considering the noted lapse of three weeks between the two presentations and the distinct differences between a composite photograph containing dozens of individuals and the five-person photo array. Conversely, unlike the unduly suggestive police identification procedure used in *Foster*, which allowed the witness to engage in a one-on-one interaction with the suspected robber, here, the police did not create a scenario in which Defendant had a one-on-one interaction with Mr. Martin nor did the police present Mr. Martin with an isolated image of Defendant to identify.

As police conduct and comments did not single out or isolate one participant as the suspect, thus making identification of that individual all but inevitable, the trial court properly denied Defendant's Motion to Suppress Identification Evidence.

B. The witness identification procedure that positively identified Defendant as the criminal suspect was reliable under the totality of the circumstances.

Additionally, the trial court properly denied Defendant's Motion to Suppress Identification Evidence because the witness's identification was reliable as the witness had adequate opportunity and proximity to Defendant to recall his appearance. *Neil v. Biggers*, 409 U.S. 188, 198 (1972). Witness identification is reliable when, under the totality of the circumstances, the witness satisfies a number of hallmark indicators of reliability: the opportunity to view the criminal at the time of the crime, the accuracy of the description of the criminal prior to identification, the witness's degree of attention, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. *Id*. In that case, the Court weighed these witness reliability factors and concluded that based on the totality of the circumstances, the witness's identification of her rapist was indeed reliable. The rape victim was within close proximity of her assailant and had an intimate face-to-face encounter with him, illuminated by the light of a full moon. *Id*. The

Court held that these elements, when considered together, rendered her identification reliable as the interaction between the rapist and victim provided the opportunity for the victim to identify and recall key features of the rapist's identity. *Id*. at 200. Similarly, when a bank robber was identified by the bank tellers he robbed, the identification of said robber was reliable, as the tellers and robber stood only feet apart during the encounter. *United States v. Gonzalez*, 863 F.3d 576, 586 (7th Cir. 2017), *reh'g denied*, 2017 U.S. App. LEXIS 17342 (7th Cir. 2017). This Court considered numerous factors of reliability after determining that the identification procedures employed were unduly suggestive but subsequently concluded that the identification was reliable. This Court reasoned that the identification was reliable since the bank tellers clearly saw the robber's face as he did not wear a mask and stood all but two feet from them during the commission of the crime. *Id*.; *see also Sexton v. Beaudreaux*, 58 US _, 138 S.Ct. 2555 (2018) (witness identification of a shooter was reliable despite the time lapse between incident and identification due to the witness's opportunity to view the shooter during their conversation).

Furthermore, witness identification is reliable when the accuracy of prior description is satisfied. *Gonzalez*, 863 F.3d at 586. In that case, this Court found that the description of the bank robber provided by a bank teller with whom he robbed was reliable due to the correctness of the description of the robber when compared to the identified individual. *Id*. The bank teller described the robber as a Hispanic man with a shaved head, between the ages of thirty-five and forty, who stood around five feet seven inches and weighed between 130 and 150 pounds. *Id*. This Court reasoned that this description was sufficiently similar to the robber's actual qualities, with only slight discrepancies noted between the suggested and actual age, height, and weight, and, therefore, was reliable. *Id*. Similarly, when a rapist was identified by his victim following a rather generic description of the rapist, this Court determined that the identification was reliable.

Israel v. Odom, 521 F.2d 1370, 1375 (7th Cir. 1975). There, the witness described the man as a person of color, who was taller than her, had a mustache, and was wearing glasses. *Id*. This Court determined that although the description was vague, reliability should not hinge on an assessment of the level of detail provided but rather on whether there are significant discrepancies between in initial description and the person who is identified, as most people struggle to articulate a thorough description of another person but may nonetheless positively identify them when presented with an opportunity. *Id*.; *see also Biggers*, 409 U.S. at 198 (rape victim's description of her assailant that included approximate age, height, weight, complexion, and build was sufficiently thorough to be reliable).

Here, the witness's identification was reliable because the witness had adequate opportunity and proximity to Defendant to recall his appearance. Mr. Martin and Defendant engaged in an intimate conversation and transaction at a party that resulted in the sale of illicit drugs, which Mr. Martin later recounted to police. Much like the rape victim in *Biggers*, whose reliability was affirmed based on her interaction with her rapist in which she directly and intimately faced him under the light of a full moon, Mr. Martin's identification was reliable as he engaged in a minute-long, face-to-face transaction with Defendant, at arm's length, lit by a powerful strobe light. Similar to the bank teller in *Gonzalez*, whose identification was reliable due to a face-to-face encounter between teller and robber, in which they were separated by a mere two feet, Mr. Martin engaged in a conversation with Defendant in which they were close enough for Mr. Martin to hear Defendant over the noise of a party, recall the substance of their conversation, and accurately provide police with Defendant's basic features and appearance. As the witness had adequate opportunity and proximity to Defendant to recall his appearance and

later positively identified him as the person he transacted with, the trial court properly denied Defendant's Motion to Suppress Identification Evidence.

Next, the witness's identification was reliable due to the accuracy of his description of Defendant prior to identification. Mr. Martin detailed to the police a description of Defendant that included accurate descriptions of his race, height, hair color and style. This is comparable to *Gonzalez*, where the bank teller's accurate description of the robber and certainty of their identification was reliable based on their provided description, which included positive recall of the robber's race, height, weight, and an accurate age range. Here, too, Mr. Martin's prior description of Defendant matched the features of the individual selected, as photograph number four depicted an individual who matched Mr. Martin's description of the criminal—a white college-aged man with short light brown hair and was approximately six feet tall. Additionally, like the rape victim in *Israel*, whose accurate but vague and generic description of her rapist was reliable, Mr. Martin's description of Defendant did not contain any inaccuracies and matched his prior description of the person he transacted with at the party. As the witness provided police with an accurate description of Defendant, the trial court properly denied Defendant's Motion to Suppress Identification Evidence.

In sum, the trial court properly denied Defendant's Motion to Suppress Identification Evidence because the witness identification procedure was not unduly suggestive, and even if the identification procedure employed suggestive features, the identification was reliable when considering the totality of the circumstances.

Applicant Details

First Name	**David**
Middle Initial	**J**
Last Name	**Anders**
Citizenship Status	**U. S. Citizen**
Email Address	**dja6wx@virginia.edu**
Address	**Address** Street **2103 Morris Road** City **Charlottesville** State/Territory **Virginia** Zip **22903**
Contact Phone Number	**301-956-3525**

Applicant Education

BA/BS From	**Vanderbilt University**
Date of BA/BS	**May 2016**
JD/LLB From	**University of Virginia School of Law** **http://www.law.virginia.edu**
Date of JD/LLB	**May 19, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Virginia Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Lile Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Prakash, Sai
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

David J. Anders
2103 Morris Road, Charlottesville, VA 22903 • (301) 956-3525 • dja6wx@virginia.edu

June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers. I expect to receive my J.D. in May 2024 and will be available to work any time after that.

I was born and raised in the DC area and I am interested in returning to practice. As a summer 2022 extern with the U.S. Attorney's Office in Los Angeles, I had the opportunity to work on criminal and civil matters and gained a special appreciation for the complexity and consequence of trial work. I am particularly interested in a clerkship with your chambers because of your prior work as an Assistant United States Attorney focused on public corruption and hate crimes. I went to law school to pursue a career in public service, and a clerkship in your chambers would be a call to service that I would accept with deep humility and respect.

Enclosed please find a copy of my resume and most recent transcript. I have also enclosed as a writing sample a note on First Amendment protections for body art. Finally, included are letters of recommendation from Professor Anne Coughlin (434-243-0392), Professor Ashley Deeks (434-243-2166), and Professor Saikrishna Prakash (434-987-7878).

If you have any questions or need to contact me for any reason, please feel free to reach me at the above address and telephone number. Thank you for your consideration.

Sincerely,

David J. Anders

David J. Anders

David Anders

2103 Morris Road, Charlottesville, VA 22903 · 301-956-3525 · dja6wx@virginia.edu

EDUCATION

University of Virginia School of Law, Charlottesville, VA
Juris Doctor, Expected May 2024

- GPA: 3.59
- *Virginia Law Review*, Managing Editor
- National Security Law Forum, President
- Middle Eastern and North African Law Student Association, Vice President
- Law and Public Service Program, Fellow

Vanderbilt University, Nashville, TN
Bachelor of Arts, Public Policy (Concentration: Security Policy), May 2016

- Minors: Corporate Strategy and Spanish
- Study Abroad: Universitat de Barcelona (Spain)

EXPERIENCE

Gibson, Dunn & Crutcher, Los Angeles, CA
Litigation Summer Associate, May 2023 – July 2023

Defense Intelligence Agency, Washington, DC
Part-time Extern, Office of General Counsel, January 2023 – March 2023

- Reviewed records of investigation and drafted motions for summary judgment and alternative dispute resolutions in defense of EEOC complaints
- Researched legal compliance of emerging national security capabilities and drafted policy memos for agency decisionmakers

U.S. Attorney's Office for the Central District of California, Los Angeles, CA
Summer Extern, Criminal and National Security Divisions, May 2022 – August 2022

- Assisted with trial preparation for a case involving federal terrorism charges related to the Orange County spa bombing, including examining evidence, drafting memoranda, and attending hearings
- Drafted memoranda and opposition motions for several cases, including motions in limine and motions to dismiss for narcotics trafficking charges, and evidentiary issues for cyber crimes

Deloitte Consulting LLP, Los Angeles, CA / Washington, DC
Senior Consultant, Strategy & Analytics, Government & Public Services, July 2016 – August 2021

- Managed and contributed to the writing and review of technical volumes in several multi-million-dollar proposal submissions to United States government agencies
- Served as lead data scientist in a contract for the U.S. Air Force Space and Missile Systems Center, including supervising a data governance and analytics initiative, and overseeing the implementation of a manpower dashboard to understand attrition and hiring, achieving a more focused recruiting strategy
- Led research and analysis efforts in support of a case study for the National Aeronautics and Space Administration on commercialization of lower earth orbit, including managing a team of two analysts to support financial and policy research of commercial space economics and regulatory landscape
- Spearheaded development and operation of the Adversary Analysis Tool, a risk analysis dashboard highlighting trends in Terrorist Screening Center Watchlist activity, in a contract for the Transportation Security Administration

PERSONAL

Languages: Spanish (advanced proficiency), Arabic (elementary proficiency)

Certifications: Active Top Secret security clearance with Counterintelligence Polygraph (completed 05/2022)

Interests: Classical piano, hiking, aviation, spicy food, WWOOF

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: David Anders

Date: June 07, 2023
Record ID: dja6wx

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

		FALL 2021			
LAW	6000	Civil Procedure	4	B+	Mitchell,Paul Gregory
LAW	6002	Contracts	4	B+	Johnston,Jason S
LAW	6003	Criminal Law	3	B+	Bonnie,Richard J
LAW	6004	Legal Research and Writing I	1	S	Buck,Donna Ruth
LAW	6007	Torts	4	A-	Armacost,Barbara Ellen
		SPRING 2022			
LAW	7160	Computer Crime	3	B+	Bamzai,Aditya
LAW	6001	Constitutional Law	4	A-	Prakash,Saikrishna B
LAW	7088	Law and Public Service	3	B+	Kim,Annie
LAW	6005	Lgl Research & Writing II (YR)	2	S	Buck,Donna Ruth
LAW	6006	Property	4	A-	Hynes,Richard M
		FALL 2022			
LAW	7017	Con Law II: Religious Liberty	3	B	Schwartzman,Micah Jacob
LAW	7019	Criminal Investigation	4	A	Coughlin,Anne M
LAW	7067	National Security Law	3	A	Deeks,Ashley
LAW	7071	Professional Responsibility	3	A	Mitchell,Paul Gregory
		SPRING 2023			
LAW	6102	Administrative Law	4	A-	Bamzai,Aditya
LAW	6104	Evidence	4	A-	Mitchell,Paul Gregory
LAW	7827	Global Bus & Corruption (SC)	1	B+	Mendelsohn,Mark Fredrick
LAW	8816	Independent Research (YR)	0	YR	Coughlin,Anne M
LAW	8807	PT Externship: Directed Study	1	A	Ryan,Anne Sprightley
LAW	8806	PT Externship: Field Experienc	3	CR	Ryan,Anne Sprightley

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend David Anders for a clerkship in your chambers. I know David from my 2023 Constitutional Law class. I believe that David is a smart, hard-working, and wonderful student. He has the makings of an industrious and valuable clerk.

As a student, David was a frequent discussant in class, challenging me and other students on topics like the commerce clause and presidential power. I encourage class participation as a means of ensuring that students grapple with the complex and difficult questions of constitutional law. David always expressed views in a measured, respectful way. But he did so in a way that often caused others to sit up and think. His intellect and his diligence helped him earn an “A-” in my class.

David has thrived at UVA Law. I am happy to say that he has found his sea legs, with his grades steadily improving over time. He also has the esteem of his classmates. He has leadership positions in three groups: President of the National Security Law Forum, Vice President of the Middle Eastern and North African Students Association and Managing Editor of the Virginia Law Review. One cannot secure these types of positions unless one exhibits leadership and has the confidence and respect of one’s peers.

On a personal note, I got to know David better over office hours and over lunch. He is polite, engaged, and amiable. These traits matter when you spend eight or nine hours a day with someone.

In short, I recommend David and think that if you meet him, you will see his many strengths. If you have any questions, I would be happy to discuss his candidacy further.

Best,

Saikrishna Prakash

Sai Prakash - prakash@law.virginia.edu - 434-243-8539

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write on behalf of David Anders, who has applied for a clerkship in your chambers. David possesses a very compelling combination of traits: a sharp intellect, excellent writing skills, a professional demeanor, and impressive interpersonal skills. I have no doubt that he will be an outstanding clerk, and he has my strongest recommendation.

I got to know David during the fall of his 2L year, when I had the pleasure of teaching him in my National Security Law class. His performance in my class was strong from the first time I called on him through his final exam. I teach Socratically and cold-call my students. David's responses to my questions were clear, rigorous, and grounded in the law. Further, because David worked for five years before law school and because he closely follows foreign policy developments outside of class, he was able to offer both deeper and broader insights during general classroom discussion than many of his classmates could. Likewise, his exam answers were very strong and well-organized, and they evidenced a thorough command of the doctrine. David's exam was in the top 15% of 68 exams, and I awarded him an A in the course.

In addition to teaching David in class, I worked extensively with him to organize national security speakers and events at the Law School. As head of the National Security Law Forum, David has a very "can-do" attitude: he is competent, quietly confident, and enjoyable to work with. He was always willing to take on the projects that I suggested; he checked in with me on important decisions but handled all of the other details deftly. Each of the events came off very well. Under his leadership, the NSLF has blossomed, with dozens of students turning out for each event and a significantly expanded membership.

If you decide to meet David, I think you will find him smart, engaging, thoughtful, and grounded. He will work with ease with anyone in any chambers. I am confident that he will perform very well as a clerk and will derive significant benefit from having had a federal clerkship. I very much look forward to following David's career, and I recommend him to you highly.

If you have any questions, please feel free to contact me at (202) 413-6574.

Sincerely,

Ashley S. Deeks

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

David Anders has asked me to write a letter supporting his application for a position as law clerk in your Chambers. I am delighted – and, indeed, honored – to do so. I am delighted because I know David well, and I find him to be super-smart, super-hardworking, and deeply ethical, all of which are indispensable qualities for a law clerk. I am honored because I predict that, in a few short years, David will be a star in our profession, of whom I'll be able to say that I knew him way back when. On top of that? David is a completely lovely, decent person. He is blessed with a generous sense of humor, he is graceful under pressure, and he is very kind. I urge you to invite him for an interview so that you and your staff can judge for yourselves whether he will be as good a fit for your Chambers as he is for our academic and professional community.

I became acquainted with David this past fall semester, when he enrolled in my Criminal Investigation course. Throughout the term, David was a superb contributor to the classroom discussion. His demeanor was engaged, respectful, and cheerful. These qualities make a very tangible contribution to a positive classroom environment – as I predict you've noticed, eye contact makes a big difference when you are teaching or speaking to people! David intervened in the dialogue on many occasions, offering well-informed and helpful insights and questions. As the weeks went by, I was delighted when he volunteered to speak in class because he inevitably threw us all a life-line. He came around to talk to me during office hours too; in those conversations, we focused on cutting-edge problems in the law of search and seizure, as well as on David's interest in pursuing a career in prosecution after he graduates from law school. As you are well aware, these days, folks from both sides of the aisle are inclined to fault prosecutors for their contributions to an array of criminal justice failures. David takes these concerns seriously, as he should, and, over the course of the semester, we had a number of conversations about them, about various features of the reform movements, and about whether and how individual prosecutors can make a difference in these polarized times. I came away from these conversations impressed by David's maturity, thoughtfulness, and good judgment. And I came away with a sense of renewed optimism about the future of criminal law if it is administered by lawyers as thoughtful and principled as David. I also came away determined to help David launch his career in prosecution, for which a clerkship (with you!) will be foundational.

David's work on our exam was superb. The exam was not an easy one, as I focused each question on difficult problems that the courts have not yet resolved and over which there is likely to be substantial disagreement and conflicting judgments. David's essays demonstrated his mastery of the doctrine, his ability to separate the wheat from the chaff, his sensitivity to constitutional language and history, and his thoughtfulness about the likely trajectory of the precedents even (and especially) when they led to a conclusion with which he was inclined to disagree. His writing was smart and clear; he actually answered my questions; his tone gave me confidence that he knew what he was talking about (and, yes, he did know what he was talking about). Both of my judges valued this type of straightforward writing, especially in bench memos; neither wanted clerks to use prose that was precious, fussy, wishy-washy, or convoluted. If you are like them, you will be well pleased by David's straightforward, thoughtful, and well-informed approach to legal writing and analysis.

David hit the ground running in law school for many reasons, among them his determination to make a professional home for himself in public service. To say the least, David had a substantial career before commencing his law studies. After obtaining his BA from Vanderbilt in 2016, he worked for five years at Deloitte Consulting, where he was elevated to the position of Senior Consultant in the firm's government and public services unit. While there, he worked on a number of highly sensitive projects for United States government agencies, as well as for civilian firms. The work was challenging and time intensive, and David tells me that he came away from the job with a whole array of skills that will serve him well as he embarks on his legal career. He learned the value of careful study and meticulous analysis of data, as well as doctrine, and he learned to listen closely to clients and their communities before choosing one course of action over another. He also came away with a deep appreciation for the important work of government, and he developed an abiding commitment to serving the government and its people more directly than he could in the world of business. With these stellar work habits, intellectual traits, and ethical commitments, David threw himself into his law school classes, and the results have been magnificent. So too, I'm sure, this work experience will serve David very well in a clerkship. He is mature, mindful of professional boundaries, not-at-all defensive, and committed to the success of the team as a whole.

Let me say in closing what I'm sure must be obvious by now: I just plain like David. I like having him around. I'm always happy to see him, and I'm thrilled that he wanted to do his independent research project with me. He's working on some of the puzzles raised by Utah v. Strieff, another Supreme Court decision that retracted the reach of the Fourth Amendment exclusionary rule, and it's a complete joy to spend time watching him develop a thesis for his paper. He is passionate about his work, loves talking about the law, and takes responsibility by making needed course corrections. I trust his judgment and would not hesitate to turn to him for advice on sensitive, as well as important, matters. I've been in law teaching for three decades – yikes! – and I see in David all of the traits that make for the best assistants and, indeed, for the best colleagues. I would hire him in a second to work with me, and I recommend him to you with confidence and joy.

Please contact me by phone or email if you have any questions about David or if I can be of any other assistance to you. I'm happy to help.

Anne Coughlin - acoughlin@law.virginia.edu - 434-243-0392

Very truly yours,

Anne M. Coughlin
Lewis F. Powell, Jr. Professor of Law
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David Anders

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The attached writing sample is a note I wrote regarding First Amendment applicability to body piercings as a form of protected expression in Spring 2022. The note argues that the Eleventh Circuit was mostly correct in its holding in *Bar-Navon v. Brevard Cnty. Sch. Bd*., 290 F. App'x 273 (11th Cir. 2008), that non-otic piercings did not qualify for First Amendment protections. The note is entirely my own work product with no edits or feedback from any other party.

THE FIRST AMENDMENT'S APPLICABILITY TO NON-OTIC PIERCINGS

INTRODUCTION

The Eleventh Circuit was mostly correct in holding that a student's act of wearing jewelry in non-otic piercings did not qualify for First Amendment speech protections. However, as a qualification, the Court erred in finding that non-otic piercings do not constitute expressive conduct.[1] This distinction is significant, as correctly classifying non-otic piercings as expressive conduct retains the possibility that in certain circumstances, the wearing of non-otic piercings may qualify for First Amendment protection. Section I of this paper will argue that non-otic piercings constitute expressive conduct. Section II will draw upon this analysis to argue that while non-otic piercings should be classified as expressive conduct, their use in most circumstances does not qualify as protected speech under the First Amendment. Section III will address counter arguments.

I. NON-OTIC PIERCINGS ARE EXPRESSIVE CONDUCT

A. *Scope of the First Amendment*

The First Amendment's protection of speech—"Congress shall make no law…abridging the freedom of speech"[2]—is not clearly defined.[3] While protection over written or spoken words is more intuitive, the Amendment's interaction with expressive conduct—that which conveys a message or idea[4]—is more nebulous.[5] Conduct must be *covered* under the Amendment before it

[1] Bar-Navon v. Brevard Cnty. Sch. Bd., 290 F. App'x 273, 276 (11th Cir. 2008) ("Nor does it rise to the level of expressive conduct").
[2] U.S. CONST. amend. 1.
[3] Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience*, 117 HARV. L. REV. 1765, 1769 (2004).
[4] *Expressive, TheLawDictionary.org*, https://thelawdictionary.org/first-amendment-2/ (last visited Feb. 27, 2022).
[5] Beyond written or spoken word, other forms of speech are less intuitively understood by a textualist reading of the Amendment. Regulation of speech such as incitement of violence, libel, and fraud are widely accepted in society while other forms such as art, music, and other forms of expression are more scrutinized. *See* Schauer, *supra* note 3, at 1769-70.

can be *protected*.[6] As only some forms of written or spoken speech are covered by the First Amendment, only some forms of expression are covered as well.[7] Conduct must convey an idea or message to be considered expression covered under the First Amendment.[8]

B. *Defining Expressive Conduct*

While the Eleventh Circuit is correct in its holding that the use of non-otic piercings may have failed in conveying an identifiable message, their broad claim that non-otic piercings are inherently non-expressive is too far a leap. Precedentially, the Supreme Court has held that the Constitution "looks beyond written or spoken words as mediums of expression."[9] Non-otic piercings, while in some cases applied solely for aesthetics, are many times used as a means of expressing one's identity.[10] They involve an intimate affixing of jewelry onto one's body, in ways that are difficult and painful to both receive and remove. Like tattoos, these forms of bodily art are likely taken seriously and purposefully, and thus are more likely used as a means of expression, not for simple appearance or aesthetics. In this sense, they can be distinguished from noncovered expression such as generic clothing and hairstyle.[11] While expressive conduct does not necessarily lead to *protected* expressive conduct, at a minimum, piercings satisfy the

[6] *Id.* at 1769.
[7] Schauer, *supra* note 3, at 1768.
[8] Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 507-08 (1969) ("[D]oes not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment"). The Supreme Court held that choice of clothing or hair style does not rise to the level of expressive conduct covered by the First Amendment.
[9] Hurley v. Irish-American Gay, Lesbian, & Bisexual Grp. Bos. Inc., 515 U.S. 557, 569 (1995).
[10] *See Piercings and tattoos a form of self*-expression, TUFTS DAILY (Feb. 19, 2004), https://tuftsdaily.com/archives/2004/02/19/piercings-and-tattoos-a-form-of-self-expression/; *see also* Marika Tiggmann & Louise A. Hopkins, *Tattoos and piercings: Bodily expressions of uniqueness?*, 8 BODY IMAGE 245 (2011).
[11] That being said, some courts have begun to recognize hairstyle and choice of clothing as indicative of expression sufficient to satisfy covered speech under the First Amendment. However, these courts carry only persuasive authority, compared with the Supreme Court's binding authority found in *Tinker*. *See* Bear v. Fleming 714 F.Supp.2d 982-83 (citing Canady v. Bossier Parish School Bd., 240 F.3d 437 (5th Cir. 2001)) (arguing that a "person's choice of clothing is inherently expressive with 'levels of intentional expression to elicit First Amendment shelter,' and they cannot declare that 'expression of one's identity and affiliation to unique social groups through choice of clothing will never amount to protected speech'").

definition of expressive conduct, leaving open the possibility for constitutional protection in certain circumstances.

II. Non-Otic Piercings are Usually Not Protected Under the First Amendment

A. *Pure Speech versus Symbolic Speech*

In determining whether a form of expression is protected under the First Amendment, courts first look to its classification as either pure speech or symbolic speech. If it is classified as pure speech, then it is entitled to at least some First Amendment protection. If the expression is classified as symbolic speech, then it is entitled to constitutional protection only if it is "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments," a context-specific inquiry.[12] While written and spoken word is categorized as pure speech, courts have categorized expressive conduct (*e.g.*, paintings, movies, body art) as either pure or symbolic speech depending on the specific context.[13]

Under this principle, non-otic piercings should be classified as symbolic speech. Symbolic speech usually constitutes a form of expression that conveys some representative idea or message to those who observe it.[14] Courts have applied relatively loose standards as to what qualifies as expression.[15] Body piercings clearly have expressive value as they are inserted for a reason beyond comfort, unlike clothing. In fact, studies show one of the most common reasons for body-piercings was to express oneself.[16] However, body piercings do not rise to the level of pure expression. In order to be classified as a pure expressive activity, the expression should convey a specific and discernable message to a reasonable observer through words, images, or a

[12] Anderson v. City of Hermosa Beach, 621 F.3d 1051, 1059 (9th Cir. 2010) (citing Spence v. Washington, 418 U.S. 405, 409 (1974)).
[13] Cressman v. Thompson, 798 F.3d 938, 952 (10th Cir. 2015).
[14] *Id.* at 956.
[15] Porter v. Gore, 354 F. Supp. 3d 1162 (S.D. Cal. 2018) (holding that Plaintiff's honking "with the intent of showing support for the Issa protest" constituted expressive activity).
[16] Tiggman & Hopkins, *supra* note 10.

collection of symbols.[17] While a petitioner may argue that they received body piercings in order to express themselves, they are non-unique forms of expression and convey a vaguer and more generic message than individualized art forms such as tattoos. Therefore, they are unlikely to constitute pure expression.[18] This view can be contrasted with cases regarding other forms of bodily art, such as *Anderson v. City of Hermosa Beach*, which held that tattooing constituted a purely expressive activity due to the uniqueness of the message that was visually conveyed, analogizing to activities such as writing words down or drawing a picture.[19] Non-otic piercings are more analogous to the type of expression that otic piercings and other jewelry might convey.

B. *Symbolic Speech and the Spence-Johnson Test*

Once an expression is deemed to be symbolic speech and not pure speech, First Amendment protection is dependent on what the Supreme Court in *Texas v. Johnson* deemed to be an expression's "'intent to convey a particularized message, and [whether] the likelihood was great that the message would be understood by those who viewed it.'"[20] Circuit and trial courts citing *Johnson* have labeled this analysis the *Spence-Johnson* test.[21]

The first prong of the *Spence-Johnson* test looks at whether the expressive conduct carries an intent to convey a particularized message. An expression's ability to convey a message is highly dependent on the nature of the expression itself. Past cases of expressions involving printed images, jewelry, clothing have all passed muster for conveying a particularized message.[22] Where courts disagree is how particularized the message must be. In *Hurley v. Irish-*

[17] *See* 798 F.3d at 954 (finding the Supreme Court has expanded the scope of pure speech to include expression such as music without words, tattoos, paintings, drawings, and movies); *see also* White v. City of Sparks, 500 F.3d 953, 956 (9th Cir. 2007) (holding that painting constitutes protected expression); *see, e.g.*, Lewis Carroll, *Jabberwocky*, *in* THE RANDOM HOUSE BOOK OF POETRY FOR CHILDREN (1983).
[18] Bar-Navon v. Brevard Cnty. Sch. Bd., 290 F. App'x 273, 276 (11th Cir. 2008).
[19] 621 F.3d 1051, 1059 (9th Cir. 2010).
[20] Texas v. Johnson, 491 U.S. 397 (1988) (citing Spence v. Washington, 418 U.S. 405, 410-11 (1974)).
[21] *See* 798 F.3d at 955.
[22] *Id.* at 952.

American Gay, Lesbian and Bisexual Group of Boston, Inc., the court held that "a narrow, succinctly articulable message is *not* a condition of constitutional protection," but only *some* message is required.[23] Given the clash of binding authority between *Hurley* and *Johnson*, lower courts have taken divergent approaches in how rigorously they interpret "particularized."[24] For the purposes of this argument, the *Hurley* standard of conveying "some" message will be applied, consistent with the Eleventh Circuit in *Bar-Navon v. Brevard County School Board*.[25]

The second prong of the *Spence-Johnson* test, while similarly context-dependent, has a clearer consensus on its scope. Courts regularly apply a reasonable-observer standard to analyze the likelihood that a message would be understood by those who viewed it.[26] In some cases, the message is so vague and generalized that it is highly unlikely that an observer would discern any message from the expression, and thus First Amendment protection does not apply.[27] On the other hand, there have been several historical instances where, given the context, an expressive act was so calculated and distinct that most observers would easily understand the specific message intended to be conveyed.[28] Many cases fall into the middle of this spectrum. If expressive conduct fulfills both prongs of the test, then it is protected under the First Amendment, and can only be regulated under certain factors that balance the regulation's purpose and impact with the interest of freedom of expression.[29]

C. *Non-Otic Piercings Most Likely Fail the Spence-Johnson Test*

[23] 515 U.S. 557, 569 (1995).
[24] 798 F.3d at 955.
[25] Bar-Navon v. Brevard Cnty. Sch. Bd., 290 F. App'x 273, 276 n.2 (11th Cir. 2008).
[26] 798 F.3d at 958.
[27] *See* Zalewska v. County of Sullivan, 316 F.3d 314 (2d Cir. 2003); *see also* Bivens *by* Green v. Albuquerque Pub. Schs., 899 F. Supp. 556 (D.N.M. 1995).
[28] *See* Tinker v. Des Moines Sch. Dist., 393 U.S. 503 (1969) (holding that the wearing of a black armband to protest the Vietnam War was protected); *see also* Texas v. Johnson, 491 U.S. 397 (1988) (holding that flag burning in protest was protected); *see also* Cohen v. California, 91 S. Ct. 1780 (1971) (holding that wearing a sweatshirt saying "f**k the draft" was protected).
[29] Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 391 (6th Cir. 2005).

Under the *Spence-Johnson* test, non-otic piercings may convey a message or idea adequately particularized to satisfy the first prong. In general, courts have found that generic fashion preferences do not convey a sufficiently particularized message to fulfill the first element of the *Spence-Johnson* test, but specific articles of clothing and jewelry may.[30] In *Grzywna ex rel. Doe v. Schenectady Central School District*, a girl's red, white, and blue beaded necklace was worn expressly to show support for U.S. troops during the Iraq War.[31] Similarly, non-otic piercings plausibly could be worn to convey some message, most likely varying in particularity based on the specific person wearing it and their identity. In many cultures, piercings carry significant cultural meaning and communicate class, document experience, and religious identity.[32] Even in more modern contexts, people are obtaining body piercings for expressive reasons.[33]

While non-otic piercings may be used to convey a message, its use most likely fails under the second prong—that the message is identifiable by a reasonable observer. Non-otic piercings are less expressive of a specific message than more distinguishable and unique forms of sartorial or bodily expression, such as tattoos, traditional cultural garments, and clothing with specific words.[34] In *Bear v. Fleming*, the court held that a student's desire to wear clothing traditional of his Native American tribe conveyed a particular message that was likely to be recognized by in

[30] *See* 316 F.3d 314 at 320 (holding that the Plaintiff's desire to wear a skirt in violation of the dress code, while intended as a form of symbolic expression, was a "comprehensive view of life and society," and therefore too general of an expression to convey a message). The court also generalized that a person's choice of dress or appearance in most contexts does not communicate elements necessary to be considered speech-like conduct entitled to First Amendment protection. *Id.* If the Supreme Court prescribed this interpretation rather than the Second Circuit, then jewelry such as non-otic piercings would arguably not be covered under the First Amendment.
[31] 489 F. Supp. 2d 139, 144 (N.D.N.Y. 2006). *See* 393 U.S. 503 (1968) (holding that black armbands in protest of the Vietnam War were expressive conduct); *see also* Chalifoux v. New Caney Indep. Sch. Dist., 976 F. Supp. 659 (S.D. Tex. 1997) (finding that a rosary with an attached crucifix conveyed a sufficiently particularized message).
[32] BUSTLE, *The Surprising History of Piercings*, https://www.bustle.com/p/the-surprising-history-of-piercings-58085 (last visited Feb. 28, 2022).
[33] *See supra* note 10.
[34] *See* Anderson v. City of Hermosa Beach, 621 F.3d 1051, 1059 (9th Cir. 2010); *see also* Cohen v. California, 91 S. Ct. 1780 (1971).

his community, and therefore fell under the umbrella of the First Amendment.[35] While certain individuals in a school community from similar upbringings or with similar interests in jewelry may recognize the piercings under the applied reasonable observer standard, a non-otic piercing will most likely be closer in recognizability to typical jewelry such as necklaces, otic piercings, and bracelets, than unique art such as tattoos. Therefore, as the majority of cases involving non-otic piercings will fail the second prong of the *Spence-Johnson* test, the conduct will not constitute expression that is entitled to First Amendment protection.

While an expression behind non-otic piercings is most likely unidentifiable to the ordinary observer and thus unprotected by the First Amendment, there are certain circumstances in which a specific type of non-otic piercing may be used in a way that satisfies the two prongs. For example, like in *Bear*, if a student wore a lip ring that demonstrated affiliation with a specific tribal affiliation, it is likely that a reasonable observer in their community, who is aware of the tribes, would discern these piercings to be expressive, warranting First Amendment protections.[36]

III. COUNTER ARGUMENTS

As the argument against First Amendment protection applied to non-otic piercings assumes its classification as symbolic speech, one may argue that it should be classified as pure speech instead. In this case, it would be "rigorously protected" by the First Amendment.[37] One would argue that given the growing prevalence in non-otic piercings, they amass an ability to convey a specific and discernable message to a reasonable observer, constituting pure speech. Most courts however require pure speech to involve the creation of a work that includes words, images, or symbols.[38] Given the physical constraints of piercings, and their more typical use as a

[35] 714 F. Supp. 2d 972 (D.S.D. 2010).
[36] *See id.*
[37] Cressman v. Thompson, 798 F.3d 938, 951 (10th Cir. 2015).
[38] *See* 621 F.3d 1051, 1061 (9th Cir. 2010).

piece of apparel, rather than a creation, classifying non-otic piercings as pure speech would be difficult to justify.

Proponents of an interpretation in which non-otic piercings are definitively protected under the First Amendment may argue that it goes against the very spirit of the First Amendment to limit free expression, especially in a public-school environment during a time in which kids are vulnerable and at a heightened need to feel comfortable and supported in their identity. They may argue that while, legally, the scope of the First Amendment may not even apply because of its lack of discernable message, from a policy perspective, students free to express themselves will be more focused and effective learners, resulting in better overall outcomes.[39] The issue with this approach is its propensity to become a slippery slope, resulting in offensive or salacious speech that, within certain contexts, disrupts order and peace, and works against the very outcomes that freedom of expression in the classroom purports to offer.[40]

IV. CONCLUSION

In most cases today, expression through non-otic piercings will not satisfy the necessary prongs under the *Spence-Johnson* test to qualify for First Amendment protection, despite being classified as expressive conduct. While some may argue that policy implications and increasing use of piercings as a means of expression may necessitate protection, the current applicable legal frameworks do not support protection at this time.

[39] Regarding school dress codes, arguments are well-balanced in the impacts of dress codes on student performance. For every argument that individualized expression results in enhanced outcomes, there are competing theories that uniformity removes distractions and increases focuses, resulting in improved outcomes. *See* Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 392 (6th Cir. 2005). Some courts go further holding that unless there is an imminent threat of violence, expression through display of language should be largely protected even in areas of decorum. *See generally* Cohen v. California, 91 S. Ct. 1780 (1971).

[40] *See* Hightower v. City and County of San Francisco, 77 F. Supp. 3d 867 (N.D. Cal. 2014) (holding that nude protests, while in some instances conveying a particularized message discernible to its observers, sufficiently disrupts order to warrant its prohibition); *see also* Bivens *by* Green v. Albuquerque Pub. Schs., 899 F. Supp. 556, 559 (D.N.M. 1995).

Applicant Details

First Name	**Tanvi**
Last Name	**Antoo**
Citizenship Status	**U. S. Citizen**
Email Address	**tanviantoo@uchicago.edu**
Address	**Address** **Street** **5454 S Shore Dr, Apt 1010** **City** **Chicago** **State/Territory** **Illinois** **Zip** **60615** **Country** **United States**
Contact Phone Number	**9259988473**

Applicant Education

BA/BS From	**Santa Clara University**
Date of BA/BS	**December 2020**
JD/LLB From	**The University of Chicago Law School** **https://www.law.uchicago.edu/**
Date of JD/LLB	**June 1, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**The University of Chicago Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Edward W. Hinton Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

Recommenders

Gocke, Alison
agocke@uchicago.edu
Strahilevitz, Lior
lior@uchicago.edu
773-834-8665
Masur, Jonathan
jmasur@uchicago.edu
773-702-5188

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Tanvi Antoo

5454 S. Shore Dr., Apt 1010, Chicago, IL 60615 | (925) 998-8473 | tanviantoo@uchicago.edu

June 26, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

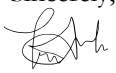
I am a rising third-year law student at The University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. I am especially drawn to the Eastern District of Virginia for its patent-heavy caseload, as patent law is a special interest area of mine. However, I also hope to gain familiarity with a range of legal issues and understand the procedural complexities of litigation that unfolds in district courts. The prospect of starting my legal career as a clerk in your chambers and being able to experience living in Virginia is truly exciting to me. I also feel that being one among your early clerks would be an invaluable opportunity and appreciate your consideration.

As a research assistant to Professors Jonathan Masur and Alison Gocke, I developed the practice of delving into unfamiliar areas of the law, from energy law to patents to questions of foreign law focused on India. I have further honed my skills through my role as a Comments Editor on *The University of Chicago Law Review*. The process of editing my peers' work has not only elevated my abilities as a writer, editor, and critical thinker but has also enhanced my efficiency and attention to detail. Additionally, I have spent the last year developing my own Comment, which analyzes the disagreement among district courts over the interpretation of the America Invents Act's *inter partes* review estoppel provision. This has allowed me to grapple with difficult questions of statutory interpretation, the workings of patent law, and explore the division of labor between district courts and administrative bodies.

At Chicago-based litigation boutique Goldman Ismail, I developed a true passion for the practice of law and gained hands-on experience by drafting pleadings, conducting legal research and analysis, and actively participating in meetings. I was particularly excited to attend trial preparation for a patent infringement matter, where I contributed to expert witness preparation, conducted legal research for emergency motions, and observed firsthand what goes into trial preparation. As a summer associate at Gibson, Dunn & Crutcher, I am continuing to build a familiarity with the law, legal research, and writing. By working as a clerk in your chambers, I hope to contribute to the resolution of difficult cases and work diligently to expand my overall understanding of complex litigation. I am confident that my strong research and analytical skills, combined with my passion for legal analysis, will allow me to make meaningful contributions to your chambers while further developing my own expertise.

A resume, transcripts, and writing sample are enclosed. Letters of recommendation from Professors Jonathan Masur, Lior Strahilevitz, and Alison Gocke will arrive under separate cover. If there is additional information I can provide, please do not hesitate to let me know.

Sincerely,



Tanvi Antoo

Tanvi Antoo

5454 S. Shore Dr., Apt. 1010, Chicago, IL 60615 | (925) 998-8473 | tanviantoo@uchicago.edu

EDUCATION

The University of Chicago Law School **Chicago, Illinois**

Juris Doctor expected June 2024

- *Journal*: *The University of Chicago Law Review*, Comments Editor
- *Publications*: *Undefined "Ground": Form or Substance in PTO Estoppel*, 90 U. Chi. L. Rev. (forthcoming 2023-24)
- *Activities*: Hinton Moot Court; American Constitution Society, Secretary; South Asian Law Students Assoc., Treasurer

Santa Clara University **Santa Clara, California**

Bachelor of Science in Political Science and Philosophy, *magna cum laude* December 2020

- *Honors*: Sourisseau Award (outstanding Philosophy senior); Fallon Award (outstanding Philosophy junior)

PROFESSIONAL EXPERIENCE

Gibson, Dunn & Crutcher LLP **New York, New York & San Francisco, California**

Summer Associate *Present*

Goldman Ismail Tomaselli Brennan & Baum LLP **Chicago, Illinois**

Summer Associate *July 2022 and August 2023*

- Conducted legal research on discovery obligations and on substitute inventor oaths in patent applications
- Assisted in drafting portions of a motion to dismiss and conducted legal research on relevant Missouri law
- Researched expert witnesses to assist in preparation for depositions on causation in mass tort suit
- Attended trials on patent infringement and product liability claims and assisted with trial preparation

The University of Chicago Law School **Chicago, Illinois**

Research Assistant to Professor Jonathan Masur *Present*

- Researched the doctrine of public use within patent law and prepared a summary of relevant case law
- Researched marriage laws and norms in mid-20th century India and wrote a summary of laws and secondary sources

Illinois Juvenile Defender Resource Center | Office of the State Appellate Defender **Chicago, Illinois**

Legal Intern *June 2022 – September 2022*

- Performed legal research and writing for a project to create an updated handbook for juvenile defenders

The University of Chicago Law School **Chicago, Illinois**

Research Assistant to Bigelow Fellow Alison Gocke *June 2022 – July 2022*

- Researched energy law scholar Shelley Welton's work on energy law's equity concerns and democratization problem
- Wrote literature review on the justice and equity issues associated with clean electrification and the green transition

The LSAT Nerds **Chicago, Illinois**

Hiring Coordinator and Tutor *April 2021 – September 2021*

- Scheduled interviews and training sessions for prospective hires, managed onboarding, and provided private tutoring

Indu Law Group **San Jose, California**

Intern *January 2020 – April 2020*

- Started PERM and I-140 applications for the 2020 cycle and created corresponding recruitment files
- Created a new system of comprehensive job duties and titles for a client company for ease of filing applications

Santa Clara County Public Defender Office **San Jose, California**

Fall Quarter Intern *October 2019 – December 2019*

- Assisted with motion drafting, summarized transcripts, evidence, records, and created exhibits to assist defense

Office of Congressman Ro Khanna **Santa Clara, California**

Fall Quarter Congressional Intern *October 2018 – December 2018*

- Completed comprehensive constituent casework using USCIS Case Status, Visa Bulletin, and Processing Times

HOBBIES AND INTERESTS

Writing short fiction, Bharatanatyam (Indian classical dance form), experimenting with new coffee brewing methods, vegetarian cooking, consciousness research, Indian philosophy, and Buddhist philosophy


THE UNIVERSITY OF
CHICAGO

THE UNIVERSITY OF CHICAGO

Name: Tanvi Antoo
Student ID: 12335012

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Santa Clara University
Santa Clara, California
Bachelor of Science 2020

Beginning of Law School Record

Autumn 2021

Course		Description	Attempted	Earned	Grade
LAWS	30101	Elements of the Law Lior Strahilevitz	3	3	182
LAWS	30211	Civil Procedure Emily Buss	4	4	177
LAWS	30611	Torts Adam Chilton	4	4	176
LAWS	30711	Legal Research and Writing Alison Gocke	1	1	178

Winter 2022

Course		Description	Attempted	Earned	Grade
LAWS	30311	Criminal Law Jonathan Masur	4	4	177
LAWS	30411	Property Aziz Huq	4	4	177
LAWS	30511	Contracts Douglas Baird	4	4	176
LAWS	30711	Legal Research and Writing Alison Gocke	1	1	178

Spring 2022

Course		Description	Attempted	Earned	Grade
LAWS	30712	Legal Research, Writing, and Advocacy Alison Gocke	2	2	178
LAWS	30713	Transactional Lawyering Joan Neal	3	3	177
LAWS	40101	Constitutional Law I: Governmental Structure Bridget Fahey	3	3	177
LAWS	44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	179
LAWS	47411	Jurisprudence I: Theories of Law and Adjudication Brian Leiter	3	3	177

Summer 2022

Honors/Awards
The University of Chicago Law Review, Staff Member 2022-23

Autumn 2022

Course		Description	Attempted	Earned	Grade
LAWS	41601	Evidence Geoffrey Stone	3	3	178
LAWS	42301	Business Organizations Anthony Casey	3	3	177
LAWS	45801	Copyright Randal Picker	3	3	183
LAWS	94110	The University of Chicago Law Review Anthony Casey	1	1	P

Winter 2023

Course		Description	Attempted	Earned	Grade
LAWS	41101	Federal Courts Alison LaCroix	3	3	179
LAWS	45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	175
LAWS	53201	Corporate Criminal Prosecutions and Investigations Andrew Boutros	3	3	179
LAWS	53256	Advanced Topics in Moral, Political, and Legal Philosophy:Marx's Phil. and Its 20th-Century Dev. Brian Leiter Michael N Forster	3	0	
LAWS	94110	The University of Chicago Law Review Anthony Casey	1	1	P

Spring 2023

Course		Description	Attempted	Earned	Grade
LAWS	43208	Advanced Civil Procedure William Hubbard	3	3	176
LAWS	43244	Patent Law Jonathan Masur	3	3	177
LAWS	53472	Advanced Topics in Law and Computing Lior Strahilevitz Aloni Cohen	3	3	179
LAWS	94110	The University of Chicago Law Review	1	1	P
Req Designation:		Meets Substantial Research Paper Requirement Anthony Casey			

End of University of Chicago Law School

Date Issued: 06/17/2023

SANTA CLARA UNIVERSITY

OFFICIAL ACADEMIC TRANSCRIPT

Name: **Tanvi Antoo**
Student ID: **00001377986**

Print Date: 06/11/2023

Send To: Tanvi Antoo
2118 Haggerty Drive
Dublin, CA 94568

Degrees Awarded

Degree: Bachelor of Science
Confer Date: 12/11/2020
Degree Honors: Magna Cum Laude

Transfer Credits

Transfer Credit from Chabot-Las Positas Community College (Semester)

			Attempted	Earned	Points
Course Trans GPA:	0.000	Transfer Totals:	6.000	9.000	0.000

Test Credits

			Attempted	Earned	Points
Test Trans GPA:	0.000	Transfer Totals:	28.000	28.000	0.000

Academic Program

Program: Undergraduate Arts & Sciences
Completed Program
Political Science Major
Pre Law Emphasis
Philosophy Major

Beginning of Undergraduate Record

Fall 2017 (09/18/2017 - 12/08/2017)

Course		Description	Attempted	Earned	Grade	Points
BUSN	70	Contemporary Business Issues	4.000	4.000	A	16.000
CLAS	11A	Cultures and Ideas I	4.000	4.000	A	16.000
	Course Topic:	Gods & Mortals				
MATH	30	Calculus for Business I	4.000	4.000	C+	9.200
PHIL	26	Ethics in Business	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.575	Term Totals	16.000	16.000	16.000	57.200
Cum GPA	3.575	Cum Totals	16.000	16.000	16.000	57.200
Combined Cum GPA	3.575	Comb Totals	53.000	53.000	16.000	57.200

Winter 2018 (01/08/2018 - 03/23/2018)

Course		Description	Attempted	Earned	Grade	Points
CLAS	12A	Cultures and Ideas II	4.000	4.000	A	16.000
	Course Topic:	Gods & Mortals				
ECON	1	Principles of Microeconomics	4.000	4.000	B	12.000
ENGL	1A	Critical Thinking & Writing I	4.000	4.000	A-	14.800
POLI	2	Intro to Comparative Politics	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.675	Term Totals	16.000	16.000	16.000	58.800
Cum GPA	3.625	Cum Totals	32.000	32.000	32.000	116.000
Combined Cum GPA	3.625	Comb Totals	69.000	69.000	32.000	116.000

Santa Clara University

Duane Voight, University Registrar

SANTA CLARA UNIVERSITY

OFFICIAL ACADEMIC TRANSCRIPT

Name: Tanvi Antoo
Student ID: 00001377986

Spring 2018 (04/03/2018 - 06/14/2018)

Course		Description	Attempted	Earned	Grade	Points
ECON	2	Principles of Macroeconomics	4.000	4.000	B	12.000
ENGL	2A	Critical Thinking & Writing II	4.000	4.000	A-	14.800
	Course Topic:	Science, Ethics & Society				
PHIL	14	Western Phil:Classic& Medieval	4.000	4.000	B+	13.200
POLI	25	Intro to Intl Relations	4.000	4.000	B+	13.200
TESP	4	The Christian Tradition	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.460	Term Totals	20.000	20.000	20.000	69.200
Cum GPA	3.562	Cum Totals	52.000	52.000	52.000	185.200
Combined Cum GPA	3.562	Comb Totals	89.000	89.000	52.000	185.200

Fall 2018 (09/17/2018 - 12/07/2018)

Course		Description	Attempted	Earned	Grade	Points
CLAS	63	Ancnt Eros:Sex Rlgn Ancnt Grec	4.000	4.000	A-	14.800
PHIL	17	Informal Logic	4.000	4.000	B	12.000
POLI	142	Politics in Middle East	5.000	5.000	B+	16.500
POLI	151	The Congress	5.000	5.000	A	20.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.517	Term Totals	18.000	18.000	18.000	63.300
Cum GPA	3.550	Cum Totals	70.000	70.000	70.000	248.500
Combined Cum GPA	3.550	Comb Totals	107.000	107.000	70.000	248.500

Winter 2019 (01/07/2019 - 03/22/2019)

Course		Description	Attempted	Earned	Grade	Points
ETHN	127	Race and Mass Incarceration	5.000	5.000	A	20.000
PHIL	19	Knowledge and Reality	4.000	4.000	A	16.000
POLI	99	Political Science Research	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	13.000	13.000	13.000	52.000
Cum GPA	3.620	Cum Totals	83.000	83.000	83.000	300.500
Combined Cum GPA	3.620	Comb Totals	120.000	120.000	83.000	300.500

Spring 2019 (04/01/2019 - 06/13/2019)

Course		Description	Attempted	Earned	Grade	Points
PHIL	15	Hist of West Phil:Early Modern	4.000	4.000	A	16.000
PHIL	127	Marx and Ethics	5.000	5.000	A	20.000
POLI	30	Intro to Political Philosophy	4.000	4.000	A	16.000
POLI	45	Criminal Justice System	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	17.000	17.000	17.000	68.000
Cum GPA	3.685	Cum Totals	100.000	100.000	100.000	368.500
Combined Cum GPA	3.685	Comb Totals	137.000	137.000	100.000	368.500

Fall 2019 (09/23/2019 - 12/13/2019)

Course		Description	Attempted	Earned	Grade	Points
PHIL	42	Faith and Reason	4.000	4.000	A-	14.800
PHIL	118	Ethics and Constitutional Law	5.000	5.000	A	20.000
PHIL	164	Metaphysics and Epistemology	5.000	5.000	A-	18.500
	Course Topic:	Phil Through Science Fiction				
POLI	113	His Pol Philosophy III	5.000	5.000	A	20.000
	Course Topic:	Post-Liberal Theories				

			Attempted	Earned	GPA Units	Points
Term GPA	3.858	Term Totals	19.000	19.000	19.000	73.300
Cum GPA	3.713	Cum Totals	119.000	119.000	119.000	441.800
Combined Cum GPA	3.713	Comb Totals	156.000	156.000	119.000	441.800

Santa Clara University

Duane Voight, University Registrar

SANTA CLARA UNIVERSITY

OFFICIAL ACADEMIC TRANSCRIPT

Name: **Tanvi Antoo**
Student ID: **00001377986**

Winter 2020 (01/06/2020 - 03/20/2020)

Course		Description	Attempted	Earned	Grade	Points
ANTH	1	Intro to Biological Anth	4.000	4.000	A	16.000
PHIL	176	Buddhist Philosophy	5.000	5.000	A	20.000
POLI	193AW	Sem in Political Philosophy	5.000	5.000	A	20.000
POLI	198A	Public Sector Study & Intern	5.000	5.000	A	20.000
TESP	103	Theology & Transhumanism	5.000	5.000	A	20.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	24.000	24.000	24.000	96.000
Cum GPA	3.761	Cum Totals	143.000	143.000	143.000	537.800
Combined Cum GPA	3.761	Comb Totals	180.000	180.000	143.000	537.800

Spring 2020 (03/30/2020 - 06/11/2020)

Course		Description	Attempted	Earned	Grade	Points
HIST	123	Plagues/Epidemics/Infections	5.000	5.000	A	20.000
PHIL	16	History of Western Phil:Modern	4.000	4.000	A	16.000
PHIL	111	Ethical Theory	5.000	5.000	A	20.000
PHIL	160	Philosophy of Mental Illness	5.000	5.000	A	20.000
THTR	21	Voice,Speech & Presentation	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	23.000	23.000	23.000	92.000
Cum GPA	3.794	Cum Totals	166.000	166.000	166.000	629.800
Combined Cum GPA	3.794	Comb Totals	203.000	203.000	166.000	629.800

Fall 2020 (09/21/2020 - 12/11/2020)

Course		Description	Attempted	Earned	Grade	Points
PHIL	166	Metaphysics of Persons	5.000	5.000	A	20.000
PHIL	177	Indian Philosophy	5.000	5.000	A	20.000
POLI	126	International Organization	5.000	5.000	A	20.000
POLI	171	Gender and Law in the U.S.	5.000	5.000	A	20.000
RSOC	99	Sociology of Religion	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	24.000	24.000	24.000	96.000
Cum GPA	3.820	Cum Totals	190.000	190.000	190.000	725.800
Combined Cum GPA	3.820	Comb Totals	227.000	227.000	190.000	725.800

End of OFFICIAL ACADEMIC TRANSCRIPT

Santa Clara University

Duane Voight, University Registrar

SANTA CLARA UNIVERSITY
OFFICE OF THE REGISTRAR
SANTA CLARA, CA 95053
PHONE (408) 554-4331 FAX (408) 554-6926
Transcript ordering information available on our Web site at www.scu.edu/registrar

CEEB Code 004851

GRADING HISTORY

Effective September 1981: Plus (+) and minus (-) suffixes were incorporated with letter grades thus providing for the following marks and numerical equivalents:

A	4.0	Excellent	P	Passed
A-	3.7		NP	Not Passed
B+	3.3		AUD	Audit
B	3.0	Good	I	Incomplete
B-	2.7		N	Continuing Work
C+	2.3		NR	Not Reported (obsolete as of Fall 2007)
C	2.0	Adequate	NS	No Show (commenced as of Fall 2007)
C-	1.7		W	Withdrawn
D+	1.3		+/-	Taken for enrichment only (obsolete as
D	1.0	Barely Passing		of Summer 1981)
D-	0.7			
F	0.0	Not Passing		

A student's grade point average is determined by dividing the total grade points by the number of units graded.

All programs, except the School of Law, use a 4.0 grading system. Grade values and what constitutes a passing grade may vary by individual graduate program. For additional information regarding grading practices in the various graduate programs, please refer to the appropriate bulletin.

Effective September 1969: A new grade "C+" (with a numerical equivalent of 2.5 grade points) was added to the extant letter grades referenced below.

Prior to September 1969: A = Excellent (4.0); B = Good (3.0); C = Average (2.0); D = Inferior (1.0); F = Failed (0.0); W = Withdrawn; WF = Withdrawn Failing; WP = Withdrawn Passing

CALENDAR SYSTEM

Undergraduate and graduate programs have been on the quarter system beginning in September 1964 to the present time. Prior to fall 1972, undergraduate credit was awarded according to the number of term courses completed. Known as the Santa Clara Plan, this system required 40 term courses. (For conversion, lower division courses were equated to 4.0 quarter units and upper division to 5.0 quarter units.) Graduate course work has been posted in quarter units since fall 1964; undergraduate course work has been posted in quarter units since fall 1972.

COURSE NUMBERING SYSTEM

(all programs except School of Law)

001-099	Lower division, undergraduate
100-199	Upper division, undergraduate
200 and above	Graduate
X001-999	Professional Growth Non-Degree Credit

CONTINUING EDUCATION/NON-DEGREE CREDIT

X is used as a prefix to the course number to designate all continuing education (professional growth) courses. Continuing education courses earn non-academic credit. One Continuing Education Unit (CEU) is equal to ten contact hours of participation in an organized, professional growth experience.

UNIVERSITY HONORS PROGRAM

Courses in the undergraduate University Honors Program are designated with an "H" or "Honors" notation. Completion of the program is reflected on the transcript.

CLASS RANK

Class rank is available in the School of Law. Class rank became available for undergraduate students at the end of fall 2002.

SCHOOL OF LAW GRADING HISTORY

Grade Scale for JD and LL.M. Degree Programs

Effective Fall 2022

A+	=	4.33	CR	Credit*
A	=	4.00	NC	No Credit*
A-	=	3.67	P	Pass**
B+	=	3.33	NP	No Pass**
B	=	3.00	I	Incomplete
B-	=	2.67	AUD	Audit
C+	=	2.33	NR	Not Reported
C	=	2.00	N	Continuing Work
C-	=	1.67		(e.g., year-long course)
D+	=	1.33		
D	=	1.00		
D-	=	0.67		
F	=	0.00		

Prior to Fall 2022

A	=	4.33	CR	Credit*
A-	=	4.00	NC	No Credit*
B+	=	3.67	P	Pass**
B	=	3.33	NP	No Pass**
B-	=	3.00	I	Incomplete
C+	=	2.67	AUD	Audit
C	=	2.33	NR	Not Reported
C-	=	2.00	N	Continuing Work
D+	=	1.67		(e.g., year-long course)
D	=	1.33		
D-	=	1.00		
F	=	0.00		

*CR, NC: Course offered only on credit/no credit basis.
**P, N/P: Students may choose to take non-required courses that are normally graded A through F on a P/NP basis.

CALENDAR SYSTEM

The School of Law (with the exception of the MLS degree program which is on the quarter system) is on a semester system. Between September 1964 and August 1968, the law school was on the quarter system.

INSTITUTIONAL ACCREDITATION

Santa Clara University is accredited by the Western Association of Schools and Colleges. A complete listing of all other institutional accreditations can be found in the University graduate, law and undergraduate bulletins.

IMPORTANT NOTICE TO RECIPIENTS OF SCU TRANSCRIPTS

In September 1999, Santa Clara University installed a new Student Information System. Academic records from June 1988 to August 1999 were migrated to a new system. Effective January 2000, academic transcripts for all records from 1988 to present have been generated from this system. Accumulated units and the grade point average for a student's academic program prior to 1988 are reflected in the pre-computer summary line appearing at the top of the computer-generated transcript. Detailed academic history for terms prior to Summer Session 1988 is recorded on the student's permanent record card. The official transcript of prior work is a certified photocopy of the permanent record card.

TRANSCRIPTS ISSUED TO STUDENTS

Official transcripts released to students will be in a sealed transcript envelope. Such transcripts are official only if the seal is intact.

220230

Tanvi Antoo

5454 S. Shore Dr., Apt 1010, Chicago, IL 60615 | (925) 998-8473 | tanviantoo@uchicago.edu

Law Transcript Explanation

I am attaching this sheet to note important information regarding my law school transcript. My Winter 2023 course, Advanced Topics in Moral, Political, and Legal Philosophy: Marx's Philosophy and Its 20th-Century Development does not have a grade on my transcript. This was a paper-based course, and the grade is still pending. I will send an updated transcript once this grade is posted.

Alison Gocke
Associate Professor of Law
580 Massie Road
Charlottesville, VA 22903-1738
Phone: 434.243.8545 | Fax: 434.982.2845
Email: agocke@law.virginia.edu | www.law.virginia.edu

May 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to support Tanvi Antoo's application for a clerkship in your chambers. I taught Tanvi as her first-year legal research and writing professor. Additionally, Tanvi was my research assistant for several months in the summer of 2022. Over the course of my time with Tanvi, I came to know her as a good student, an excellent researcher, and a kind person. I believe she will make a skilled law clerk and a congenial presence in chambers.

As Tanvi's legal research and writing professor, I oversaw Tanvi's writing of two legal research memos and a legal brief. I also judged Tanvi in the first-year moot court oral argument simulation. Throughout the year, Tanvi completed small research and writing assignments. For each of these projects, I gave Tanvi detailed line edits and substantive feedback. Finally, I supervised Tanvi's drafting of a literature review for me for one of my research projects.

Based on these experiences, I can say that Tanvi is a capable student. From the beginning of her 1L year, Tanvi demonstrated an ability to read cases insightfully and creatively; she often spotted key details or facts of cases that others missed and understood how to incorporate them to make her arguments more persuasive. Tanvi is also a good writer. She writes clearly and persuasively. She is able to synthesize a wide range of sources and information and boil them down to their key components. She also quickly grasped the need not just to synthesize and summarize key information, but also to analyze it and fit it into a broader framework. I believe this is a key skill for law clerks, who need to be able not just to communicate information but to provide a framework through which issues and arguments can be analyzed.

Perhaps more importantly, Tanvi is also an incredibly hard worker and intellectually curious. As part of my assignment to Tanvi as my research assistant, I gave Tanvi a complicated and technical area of the law to research (I specialize in energy law and policy). I told her that I did not expect her to have any familiarity with this area of the law, as she had not taken administrative law or any other course that would introduce her to these topics. To my surprise and delight, Tanvi returned to me with an extensive body of research as well as a sophisticated knowledge of public utility regulation, how our electricity grid works, the technology behind rooftop solar and net metering programs, and issues around access and justice in our energy system. Along the way, Tanvi asked me some questions; but for the most part, Tanvi taught herself a good chunk of the legal and technical background necessary to complete her literature review. Tanvi also highlighted key questions and problems in the field that require further research, and I subsequently incorporated some of her suggestions into my Energy Law and Policy course at the University of Virginia. The level of work that Tanvi produced was something I would have expected out of a 2L or 3L, but not a 1L.

Incidentally, I had the sheer pleasure of reading early drafts of Tanvi's article, What is a "Ground"?: Form or Substance in PTO Estoppel, which is forthcoming as a Comment in the University of Chicago Law Review. I believe this article displays Tanvi at her best: someone who is able to become an expert in a highly technical field, communicate the complexities and nuances of that field to laypeople, and reveal interesting and undertheorized legal problems in that field that are both practically important and academically compelling. Tanvi came up with the idea for this article on her own; she was working as a legal intern at a law firm specializing in patent law, and noticed a Circuit split over an issue that was central to many of her cases. Tanvi dug into this problem, surfacing both the legal dimensions of the split and how this split is a microcosm for broader theoretical and institutional problems in the patent field. Through her own hard work, Tanvi composed an article that I believe will be helpful for practitioners and academics alike.

In sum, Tanvi is the kind of student who will work hard when given a particular topic to research and will develop expertise and insight in that topic. Given that this describes well the brief of a law clerk, I believe Tanvi will make an excellent clerk, and I encourage you to consider her candidacy. I would be delighted to talk more about Tanvi; please feel free to call me at 443-472-2036 or email me at agocke@law.virginia.edu.

Sincerely,

Alison Gocke
Associate Professor of Law

Professor Lior J. Strahilevitz
Sidley Austin Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
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May 25, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Tanvi Antoo, a rising third-year student at the University of Chicago Law School, has applied for a position in your chambers as a law clerk. She has all the qualities of a terrific clerk, including a quick mind, a pleasant demeanor, admirable self-awareness, and top-shelf writing skills. I recommend her to you enthusiastically.

I have taught Tanvi in two classes at Chicago, a large first-year course called Elements of the Law, and a smaller seminar called Advanced Topics in Law and Computing. Elements introduces students to many of the key concepts that every lawyer needs, like an understanding of the common law method and stare decisis, the tradeoffs associated with rules versus standards, different approaches to reading legal texts, property rules and liability rules, slippery slopes, and questions of comparative institutional competence among the Congress, courts, and the executive. Along the way, students are exposed to several bodies of case law, though the goal of the class is to use the cases to illustrate ways of thinking about the law rather than mastering any particular set of doctrine. The Elements exam tests both theory and doctrine, and I tend to give the students problems grounded in bodies of law that have come up in class.

Tanvi's Elements exam was magnificent. I scored it as the fifth best examination in a 64 student class. The class was stacked with strong students but Tanvi's performance was sparkling even when measured against some of the most talented law students in the country. Tanvi's exam was beautifully written and intuitively organized with some superb turns of phrase. The front half of the exam asked students to write a judicial opinion resolving a hypothetical dispute over the 22nd Amendment's meaning, and Tanvi showed off her mastery of careful textualist analysis, purposivism, and pragmatic readings of the law. She displayed an excellent knack for eloquent writing too. In the margins next to her final paragraph I wrote, "I can hear the music swelling!" The exam's second question was a big-picture problem that asked the students to draw on course readings to evaluate a famous statement by Blackstone about the relationship between law and equity. The question threw many students for a loop (but not Tanvi) because it required them to slice through the course material in ways none of them were expecting. Tanvi excelled on each half of the examination. Her answers were very thoughtful, using the assigned readings in creative but altogether persuasive ways. At the very start of law school, Tanvi had already shown genuine talent as a lawyer.

Tanvi's performance in Advanced Topics in Law & Computing this past spring was also impressive. The seminar included 12 law students, 9 PhD students in Computer Science, and one Masters in Public Policy student. The interdisciplinary enrollment was by design, and I co-taught the class with a computer scientist. We assigned judicial opinions dealing with topics like the Computer Fraud and Abuse Act, the Communications Decency Act, electronic surveillance by the NSA, differential privacy and the US Census, artificial intelligence, de-identification and re-identification of data sets, and compelled decryption. We also assigned technical readings and videos by computer scientists explaining the underlying science. Each student in the seminar agreed to stretch themselves and explore material with which they were unfamiliar, and in its first iteration the interdisciplinary seminar turned out to be a great success. Tanvi's contributions to our collective learning were a big part of that.

Tanvi wrote a series of carefully crafted and creative short papers reacting to the assigned reading, and in addition to weekly participation in seminar discussions, she contributed ably to a group presentation with JD and PhD students. In fact, one thing that stood out to me about Tanvi's group's presentation was that a member of her group talked for far more than his allotted time – group presentations were limited to twenty minutes and he spoke for roughly ten. Tanvi was the last of the four students in the group to present, and she had about two and a half minutes to cover roughly five minutes of material. Rather than trying to squeeze too much content into a short amount of time she immediately made a decision to cut several slides and focus on her most important points. Whereas her classmate had floundered by pursuing ad-libbed tangents, Tanvi proved to be a skillful editor of her own presentation in real time, and she handled the situation with grace. Tanvi's participation in class discussion was also admirable. She displayed excellent listening skills and genuine enthusiasm for learning technical concepts in Computer Science despite her background as a philosophy and political science double major. There were several students who spoke more often during the seminar, but Tanvi more than held her own, and her comments often helped to synthesize debates or point towards unrecognized common ground. At the end of the seminar my fellow instructor and I both agreed that Tanvi deserved a 179, which is an honors level grade. (Students who graduate with a 179 average or better at Chicago earn Latin honors, a tall order at a school that remains allergic to grade inflation. Or, to use a different benchmark, grades of 179 or better are awarded at Chicago nearly as often as Honors-level grades at Stanford and Harvard Law Schools.)

In addition to being a strong student, Tanvi is a genuine delight as a person. Tanvi is the first American citizen in her family; her

parents both immigrated from India and it took fourteen years for them to advance from green card holders to citizens, a wait that weighed on the entire family during that period. Her dad works as an IT consultant and her mom gave up her work as a data analyst to stay home and care for Tanvi and her younger brother. Tanvi's parents raised her to value education above all else, and she was a superb student at Santa Clara University, earning multiple awards for being the best student in Philosophy and graduating *magna cum laude*. Tanvi was admitted to several elite law schools but chose the University of Chicago because of its small size and emphasis on teaching and mentorship.

While excelling with academics, Tanvi has also become quite involved in our close-knit community, serving as an officer in both SALSA (the South Asian Law Students Association) and our vibrant ACS chapter. Though these past two years have been Tanvi's first time living outside the Bay Area (and experiencing real winters!) she has enjoyed her time in the Windy City, exploring its diverse neighborhoods, discovering its hidden gem eateries, and working on her abilities as a chef. As someone who came to law school with no lawyers in the family or in her extended network, she has been eager to pay it forward after learning the ropes, and she is currently mentoring several first-year South Asian students. She finds that work to be especially rewarding. Over the long term, Tanvi anticipates that she will become a litigator, probably focusing on intellectual property matters. Based especially on her terrific performance in the Advanced Topics in Law & Computing seminar this spring, I know she will do a wonderful job of bridging the divide between lawyers and technologists, and put her excellent writing and research skills to use.

What stands out most about Tanvi Antoo, even with her academic accolades, is that she's an especially fun, empathic, and kind woman. It's immediately apparent when you meet her that she is an authentic person who is comfortable candidly expressing her views, intuitively sees problems from many angles, and communicates effectively and fluidly. She is very easy to talk to and has a fine sense of humor, so she'll be a great clerk and an excellent colleague for her fortunate co-clerks.

If you are looking for a learned law clerk who will have the confidence to tell you what she really thinks about each case in a respectful but firm way, then Tanvi should be a particularly enticing candidate. It's a pleasure to support her application, just as it's been a joy to have her as my student.

Sincerely,
Lior J. Strahilevitz

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to offer a very strong recommendation of Tanvi Antoo for a judicial clerkship. Tanvi is an immensely diligent and dedicated student, someone who strives to produce the best possible work at every turn. She is bright and creative, as well as a skilled writer and analytic thinker. She has performed well in multiple classes and authored a terrific Law Review comment, which the journal is in the process of publishing. I am confident that she will be a successful law clerk.

I first met Tanvi when she enrolled in my Criminal Law class in Winter quarter of her 1L year. Even within a class of more than sixty-five highly talented students, it did not take me long to recognize Tanvi's intelligence. She quickly demonstrated real expertise in solving very difficult analytic legal problems, the type that crop up frequently in the criminal law. Perhaps even more importantly, she was expert at drawing connections between the day's subjects and topics or issues we had studied at earlier points in the course. This speaks both to Tanvi's intelligence and to her work ethic. It is easy for students to study only the reading scheduled for the current day, coasting through the course one reading assignment at a time. Tanvi, by contrast, was clearly hard at work throughout the quarter, studying old material and analyzing how it applied to the new subjects we encountered.

I called on her five times during the course: once to discuss the law of actionable omissions, once to analyze how drunkenness affects mens rea, twice regarding difficult topics in the law of felony murder, and once to discuss the law of complicity and how it relates to the requirement of causation. She was superb each and every time. In particular, her analysis of felony murder was dramatically different (and better) than what I have come to expect from 1Ls. She managed to tie the issue we were discussing—the "inherently dangerous" limitation to felony murder—to a subject related to proximate cause from a prior class. Few students can remember what we have discussed earlier in the same class, much less draw meaningful connections across subjects. Here, Tanvi was capable of accomplishing just that between subjects that were separated by weeks.

Tanvi finished the class by writing a good exam and received a strong grade. I have learned over the past two years that timed law school exams are not Tanvi's strong suit; her performance under those conditions often underrepresents how well she really knows the material and how good she is at thinking through complicated questions when given adequate time. Some students are born with the talent of taking law school exams; others have to learn it over the course of three years in law school. Tanvi seems firmly in the latter camp. Needless to say, however, law school exams are the most artificial part of law school; nothing in practice quite resembles them. I thus do not put much stock in exams when I know the student to be a talented thinker, as Tanvi clearly is.

During the summer between her 1L and 2L years, Tanvi was selected as a member of the University of Chicago Law Review. Her first task as a newly minted law review member was to select a topic for her law review comment, and much to my delight she hit upon an interesting and complex patent law topic. Patent law is one of my areas of academic expertise, so I was assigned to supervise the writing of Tanvi's comment. Doing so was an immense pleasure. The topic of her comment was the rule governing estoppel between patent litigation in federal district court and Inter Partes Review before the Patent and Trademark Office (PTO). The America Invents Act of 2011 created a process, known as Inter Partes Review, that allows anyone to file an action in front of the PTO challenging an existing patent and alleging that the patent is invalid and should not have been granted. These challenges are heard by three-judge administrative panels located within the PTO. If the three-judge panel agrees with the challenger and invalidates the patent, that decision is binding on the federal courts.

Accordingly, Inter Partes Review is popular among patent defendants who have been sued for infringement in federal court. They frequently respond to those suits by immediately filing an Inter Partes Review in front of the PTO. That raises the question of estoppel: if the defendant/challenger loses the Inter Partes Review, to what extent are they estopped from making the same invalidity arguments in federal court that they already made and lost before the PTO?

The relevant statutory section states that no party can attack a patent in federal district court on the same "grounds" on which it already tried and failed to attack the patent in the course of Inter Partes Review. But that language begs the question of what "grounds" are, and district courts have split on the issue. Some district courts have held that a "ground" is a particular piece of evidence: the challenger cannot put forward the same piece of evidence in district court that it tried and failed to use in the context of an Inter Partes Review. Other courts have held that a "ground" is an argument: the challenger cannot advance the same argument that has already failed in the Inter Partes Review, even if they make use of different pieces of evidence.

Based primarily on a close intra-textual reading of the America Invents Act, Tanvi compellingly concluded that the second group of district courts ("ground means argument") was correct. In particular, she pointed to provisions in the statute that separately referenced "evidence" as an indication that "ground" must mean something different. She also expertly connected this argument with the goals and purposes of the America Invents Act, and Inter Partes Review more broadly, to show that the contrary view would not effectuate the goals of the statute in streamlining patent litigation and procedures. Her comment was incisive, clever, and thoroughly convincing. It was also smoothly and clearly written—a fine example of solid legal writing. It was remarkable to witness how she taught herself broad swaths of patent law and threw herself into a topic that she would never have given a second thought even a month earlier. Tanvi demonstrated that she is a true intellectual, excited about ideas and eager to think rigorously through important topics. Her comment has now been accepted for publication by the University of Chicago Law

Jonathan Masur - jmasur@uchicago.edu - 773-702-5188

Review, and on the basis of this comment Tanvi was chosen as a Comments Editor on the journal. I recommend this excellent piece of student work to you very strongly.

After this experience, I was delighted when Tanvi enrolled in Spring 2023 in my course on Patent Law. Knowing her expertise in patent law, throughout the quarter I reserved the privilege of calling on Tanvi for occasions when I wished to pose a particularly tricky question to the class. I was never disappointed with the result. During the second week of class I asked her a difficult series of questions related to Motionless Keyboard and the public use bar, which she handled with incredible ease and facility. Then, a week later, I challenged her to explore and analyze the Supreme Court's Myriad decision. Her answers were both thoughtful and insightful, and they expertly combined her comprehensive knowledge of biology with marked legal intuition and reasoning ability. Similarly superb cold calls regarding obviousness (KSR), literal infringement (Phillips), and reasonable royalty damages (LaserDynamics) followed in due course across the next several weeks. If there was any doubt that Tanvi had acquired a comprehensive and thorough understanding of patent doctrine, these experiences erased it.

Her exam was of a piece with her impressive work during class. In particular, she handled an extremely challenging question about infringement and invalidity—one that required the students to consider literal infringement, infringement by the equivalents, written description, enablement, and obviousness in one fell swoop—with incredible dexterity and expertise. It also became clear that Tanvi could do more than work with doctrine; she understood patent policy at a deep level, and she had acquired real legal intuition regarding how Federal Circuit judges decide cases. Her exam earned a high grade, one that would have been even higher were I not bound by a stringent grading curve. I do not know whether Tanvi will end up working as a patent litigator (though I hope so), and of course she may find herself in a clerkship that involves only relatively little patent law. Nonetheless, her obvious facility with intricate federal statutes and bodies of caselaw augur well for her ability to thrive in any challenging federal clerkship.

Finally, after supervising her law review comment and watching her become an expert in patent law before my eyes, I was delighted when Tanvi indicated that she was interested in working for me as a research assistant. I hired her on the spot. Despite the fact that she was balancing her time as a research assistant with writing her comment and doing all of her typical schoolwork, Tanvi managed to complete two projects for me. The first involved patent law: I asked her to research a line of cases involving the patent law doctrine of public use, under which patents can be invalidated if the inventions underlying them are put on display by their inventors. This was a subject that Tanvi had not yet studied, and I was asking her to excavate a line of cases that has largely be overlooked and poorly understood. Yet she performed fabulously. She found an entire series of cases that I did not know existed, and she wrote a brilliant and insightful research memo laying out the importance of these cases and the best way to synthesize and understand the relevant doctrine. It was fabulous work, and her findings now form the backbone of an article titled "Real-World Prior Art" that Professor Lisa Ouellette (Stanford) and I will soon be publishing in the Stanford Law Review.

For the second project, I asked Tanvi for help with something entirely different: research on the laws and norms surrounding marriage in mid-Twentieth Century India. This related to a project I was pursuing on the depiction of Indian marriage law in works of literature, and Tanvi again engaged with the legal research with great enthusiasm and intelligence. Drawing upon primary sources, she assembled a comprehensive picture of the Indian law and norms surrounding marriage, and in the course of a research memorandum she expertly situated it within the relevant socio-cultural context. Her work went well beyond anything I might have expected from a 2L, and again it showed her ability to teach herself entirely new areas of law on the fly. Tanvi's research now forms the backbone of a paper that I am writing with Professor Seebany Datta-Barua (Illinois Institute of Technology), and I could not be more grateful for her assistance.

In sum, Tanvi Antoo is a smart and talented student, a careful and mature thinker, and a diligent researcher and sharp writer. I should add as well that she is incredibly generous with her time and a great colleague to her peers—the sort of person who will be immensely well-liked in chambers. She will be an asset to any judge who hires her and a favorite among any group of co-clerks who work with her. I recommend her very highly.

Sincerely,

Jonathan Masur
John P. Wilson Professor of Law

Jonathan Masur - jmasur@uchicago.edu - 773-702-5188

Tanvi Antoo

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Writing Sample

The attached writing sample is an excerpt from my student Comment, which will soon be published in *The University of Chicago Law Review*. I performed all of the research and have personally written this piece. I have received feedback from my *Law Review* editors, from Professor Alison Gocke, and from my Comment Advisor, Professor Jonathan Masur. The writing in this excerpt is my own. I have discussed which sections to excerpt with my school's writing coach. I have omitted the Introduction; the first portion of Part I, which provides background on the patent system in general and on the purpose of the Patent Trial and Appeal Board; Part III, which discusses the pragmatic considerations and institutional questions associated with this question; and the Conclusion. The writing sample begins with Part I.B, an explanation of the district court split. Below is my abstract, which provides an overview of the piece:

This Comment seeks to resolve a dispute among district courts over how to interpret the term "ground" in 35 U.S.C. § 315(e)(2), the America Invents Act's estoppel provision. The question of whether a party that asserts a printed publication or patent in an inter partes review ("IPR") proceeding is estopped from asserting real-world prior art, such as a system or device, in a later civil action under § 315(e)(2) has resulted in a district court split. Some courts have construed the estoppel provision narrowly, reasoning that because a physical object like a device is not something that could have been raised during IPR, estoppel cannot apply. Under this interpretation, "ground" is interpreted to mean a piece of evidence. Because physical products are not the same type of evidence offered during IPR, litigants are not estopped from using them in later civil actions. On the other side of this, courts have determined that estoppel can apply, but does not in situations where the physical object being raised is either "superior and separate" or presents a "substantive difference" to the paper prior art raised in the IPR. Here, "ground" is interpreted to mean argument, such that estoppel applies when the device offers no new arguments other than those already put forth during the IPR—in other words, when litigation would be duplicative. The resolution to this question carries significant consequences for the cost, efficiency, and institutional division of labor of the patent system.

This Comment argues that the AIA's text and purpose supports adopting the substantive difference approach. This approach strikes a workable balance in focusing on the legal arguments to ensure that litigants are not receiving an undue second bite at the apple by being able to re-litigate the same arguments already decided by the Patent Trial and Appeal Board. The substantive difference approach is supported by the text and advances the AIA's purpose in offering inter partes review as a cheaper, faster alternative to district court litigation. It also promotes a reasonable division of responsibilities between the PTAB and district courts. Overall, as this Comment explains, this interpretation best aligns with the patent system's goals.

Undefined "Ground": Form or Substance in PTO Estoppel

PART I: LEGAL BACKGROUND

B. The District Court Split

This Section explains the case law surrounding the interpretive disagreement over the term "ground." It is useful to examine the AIA's text at this juncture. An invention can be represented both by a printed publication and by an actual device. The AIA, however, limits IPR proceedings to prior art consisting of patents or printed publications. Under § 311 of the AIA, "[a] petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a *ground* that could be raised under section 102 [novelty] or 103 [obviousness] and *only on the basis of prior art consisting of patents or printed publications*."[54] A petitioner that asserts paper prior art[55] in an IPR proceeding "may not assert either in a civil action . . . or in a proceeding before the International Trade Commission . . . that the claim is invalid on any *ground* that the petitioner *raised or reasonably could have raised* during that inter partes review."[56]

District courts have fallen into two general camps in interpreting the estoppel provision, each of which is explained below. One camp, utilizing "the form approach," interprets "ground" to refer to the specific piece of prior art.[57] In this situation, *real-world* prior art (like a device) takes a different form than the *paper* prior art (like a patent or catalogue) raised during IPR, and therefore estoppel does not apply. The other camp, utilizing the "substance approach," interprets "ground" to mean "argument."[58] These courts are not looking at the precise form of prior art being relied upon—i.e., whether it is a printed publication versus a device—but rather at whether a different argument is being made when the device is invoked for the first time as prior art in district court litigation.

To better understand this distinction, recall for a moment the camera from the Introduction's example. In that scenario, the courts applying the form approach would hold that the "ground" raised during the IPR was the product manual itself. In contrast, courts applying the substance approach would hold that the ground was the particular substantive argument made about whether the product manual had all of the elements of the patent and thus made the patent ineligible as non-novel. The second camp interprets ground to mean "argument," such that the inquiry turns on whether the real-world prior art supports an argument for invalidity not raised by the paper prior art previously assessed by the PTAB. Within this substance-based camp, some courts have required that a claim meet a "superior and separate" standard, while others have taken a "substantive difference"

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[54] 35 U.S.C. § 311(b).

[55] It is worth noting that IPR's limitation to paper prior art could be argued to be an arbitrary line, and that it may make sense to allow devices to be introduced during IPR proceedings. The argument for this limitation is likely one based in efficiency concerns and the need for IPR to be a speedy proceeding. But, allowing devices or other real-world prior art in IPRs would solve the confusion over estoppel in district courts. Though outside the scope of this Comment's line of argumentation, this is a point that bears acknowledging.

[56] 35 U.S.C. § 315(e)(2).

[57] *See, e.g.,* Biscotti Inc. v. Microsoft Corp., 2017 WL 2526231, at *8 (E.D. Tex. May 11, 2017) ("Biscotti argue[d] that Microsoft intend[ed] to assert certain systems as prior art to the asserted claims, yet Biscotti characterize[d] this system prior art as printed subject matter in disguise, i.e., subject matter that could have been raised during IPR proceedings," the court pointed to § 311(b)'s language to reach the conclusion that "Microsoft therefore could not have raised a prior art "system" during IPR proceedings").

[58] *See, e.g.,* Wasica Fin. GmbH v. Schrader Int'l, Inc 432 F. Supp. 3d 448, 454–55 (D. Del. 2020), appeal dismissed, 2020 WL 8374870 (Fed. Cir. Sept. 24, 2020).

approach. The following subsections highlight the form camp and the substance camp in turn. Within the substance camp, both subsidiary approaches will also be described and distinguished.

1. The Form Approach

The form approach adopts a narrow reading of § 315(e)(2). The basic idea is that the "ground" is the particular piece of prior art—i.e., a product manual. What follows as a consequence of this interpretation is that, because real-world prior art cannot be raised in an IPR, estoppel cannot apply to any argument for invalidity in district court supported by real-world prior art. For example, in *Chemours Co. FC, L.L.C. v. Daikin Indus., Ltd.*,[59] the District Court for the District of Delaware concluded that, "[a]s a matter of statutory interpretation, estoppel does not apply to [ ] prior-art products . . . regardless of whether those products are 'cumulative'"[60] of the paper prior art used in the IPR. The court held that "§ 315(e)(2) does not estop an IPR petitioner's use in litigation of an invalidity theory that relies upon [real-world prior art] as a prior art reference because a prior art product cannot be used as a reference to challenge the validity of a patent claim in an IPR," and, thus, "any invalidity theory relying upon that [real-world prior art] as a prior art reference is not a 'ground' that reasonably could have been raised during the IPR."[61]

The *Chemours* court also considered congressional purpose when interpreting the estoppel provision. The court noted that "[t]he statute at issue was the product of considered debate and careful thought," and that Congress "could have broadened the categories of prior art on which IPR could be requested," or specified that estoppel would apply to a device disclosing the same arguments covered by the paper art in the IPR, but did not do so. The court chose to adhere to "well-accepted canons of construction" while stating that "it is not for this Court to ignore Congress's omission and create additional bases for estoppel."[62] It is worth noting that the court did not specify what those well-accepted canons are.

Echoing the *Chemours* court's reasoning, other courts taking the form approach have agreed that "[e]stoppel does not extend to other types of prior art, such as prior-art devices . . . Therefore . . . defendants can rely on the prior-art systems in their invalidity contentions to argue anticipation or obviousness."[63] In *Medline Indus., Inc. v. C.R. Bard, Inc.*,[64] Medline sought to estop Bard from pursuing any invalidity grounds that relied upon its physical products, arguing estoppel on the basis of § 315(e)(2).[65] The District Court for the Northern District of Illinois read "ground" to mean the "specific piece of prior art or combination of prior art that a petitioner raised, or could have raised, to challenge the validity of a patent claim during an IPR."[66] This reading again embraces the view that "any invalidity theory relying upon that product as a prior art reference is not a 'ground' that reasonably could have been raised during the IPR."[67]

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[59] 2022 WL 2643517 (D. Del. Jul. 8, 2022).

[60] *Id.* at *1.

[61] *Id.*, *citing* Medline Indus., Inc. v. C.R. Bard, Inc., 2020 WL 5512132, at *3 (N.D. Ill. Sept. 14, 2020). An invalidity theory is a reason put forth to support the invalidity defense, an assertion that the "patent holder did not satisfy the basic requirements to obtain a patent, usually because the claimed invention was not novel or would have been obvious when it was invented." Roger A. Ford, *Patent Invalidity Versus Noninfringement*, 99 CORNELL L. REV. 71, 73–74 (2013).

[62] *Id.*

[63] CliniComp Int'l, Inc. v. Athenahealth, Inc., 2020 WL 7011768, at *2 (W.D. Tex. Oct. 28, 2020).

[64] 2020 WL 5512132 (N.D. Ill. Sept. 14, 2020).

[65] *Id.* at *3

[66] *Id.* at *4 (emphasis added).

[67] *Id.*

The *Medline* court made a similar argument to *Chemours* about congressional purpose, noting that:

> If Congress had wanted to estop an IPR petitioner from pursuing invalidity grounds that relied upon a physical product in a particular situation, such as where a patent or printed publication discloses the same claim limitations as the product, it could have provided language to that effect. Congress did not do so, and this failure indicates that Congress did not intend for the IPR estoppel provision to be that broad.[68]

Medline caveats that an IPR petitioner avoids statutory IPR estoppel only if actually relying upon a product or product-related evidence, meaning that a litigant must demonstrate that they are making an argument based on the product.[69]

These cases hold that the AIA's text uses "ground" to mean "specific piece of prior art," and thus precludes an interpretation that would apply estoppel to real-world prior art, like devices. The use of the camera from the example in the Introduction would never be estopped in district court because a party could not have raised it during IPR—even if, per the *Chemours* court's interpretation, the camera revealed no new information from what had already been disclosed during IPR. A litigant that can raise a physical product like the camera would always be allowed to do so due to the limitation to patents and printed publications that constrains IPR.

2. The Substance Approach

Courts that take the substance approach—which generally agree that "ground" means "argument" rather than piece of prior art—fall into two camps. The first calls for a "superior and separate standard," which requires that the new ground being asserted derives from a superior reference (meaning more probative) that is separate from that invoked during IPR. Under this approach, the court must determine whether "the physical product discloses features that are not included in the printed publication."[70] The standard "requires certain claim limitations to be independently satisfied by prior art in a way that is different from an associated prior art patent or printed publication."[71]

The second is a "substantive difference" approach that asks for, as the name suggests, a relevant substantive difference between the arguments for invalidity deriving from the paper prior art and from the device being subsequently asserted.[72] The key point is that the superior and separate standard is about the reference itself—it asks whether the device discloses something above and beyond the references used in the IPR. By contrast, the substantive difference standard is about the argument—the question is whether the argument being made in district court is in some way different than the argument made in the IPR. This subsection explains both standards and argues that the substantive difference approach is the better of the two.

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[68] *Id.*

[69] *Medline*, 2020 WL 5512132 at *4.

[70] Christian Karpinski, *Patent Owners Face Unknown Arguments as to Whether IPR Estoppel Attaches to Physical Products*, 19 UIC REV. INTELL. PROP. L. 328, 339 (2020).

[71] *Id.* at 339. Claim elements are also referred to as claim "limitations" because they add an element to the invention's scope, and thus limit the class of infringing devices or processes to those that also have that limitation. *See* MASUR & OUELLETTE, *supra* note 2, at 28.

[72] *Caltech*, 2019 WL 8192255, at *8.

a. Superior and Separate

What the court looks for in a superior and separate determination is a demonstration that the "physical system [ ] establish[es] certain functionalities (or a lack thereof) that are not present in the printed publications."[73] For example, if the sales catalog of the Acme camera from the Introduction contained a claim for a hyper-responsive on-off button, a court applying the superior and separate standard would apply estoppel if the camera had nothing more than that same on/off button in physical form. Under this standard, the button itself simply represents a claim already raised by the sales catalog. By contrast, estoppel would not apply if the sales catalog did not describe the button, and the device was brought forth in district court to prove the hyper-responsive button functionality—this would be a new functional element, not present in the sales catalog. The focus is whether the device being asserted reveals some new element or function—perhaps, for example, upon physical deconstruction—that was not covered by any of the paper prior art in IPR.

The case most cited for the superior and separate standard is *Star Envirotech, Inc. v. Redline Detection, LLC*.[74] In *Star Envirotech*, the plaintiff alleged that the defendant, Redline, had infringed its '808 patent[75]—a utility patent for a smoke and clean air generating machine for detecting the presence and location of leaks in a fluid system (e.g. the evaporative or brake system of a motor vehicle)—for its product, the Leakmaster.[76] Redline filed an unsuccessful petition for IPR, where it put forth the patent as paper prior art.[77] In the district court proceeding, Star Envirotech argued that though the LeakMaster itself could not have been admitted in the IPR, Redline could have instead put forward the LeakMaster's owner's manual, which Redline had in its possession at the time of the IPR.[78] The court disagreed with this argument, finding that "the physical machine itself discloses features claimed in the '808 Patent that are not included in the instruction manual, and it is therefore a superior and separate reference."[79] To substantiate this reasoning, the District Court for the Central District of California pointed to claim nine of the '808 patent, which requires "locating a heating element within a closed smoke producing chamber," and noted that the LeakMaster's instruction manual does not describe the closed smoke producing chamber, but the device itself, "if dissembled, could shed light on whether it practices this claim limitation."[80]

Contour IP Holding, LLC v. GoPro, Inc.[81] illustrates another situation where a device was not estopped under this approach. Contour alleged that GoPro improperly sought to "relabel prior art references in order to make the same invalidity arguments and circumvent the application of estoppel."[82] GoPro, on the other hand, claimed that estoppel is not so broad and that it could assert prior art references used during IPR, so long as those were combined with art not reasonably available during IPR.[83] GoPro sought to raise the GoPro HD Motorsports HERO video camera, which it could not have raised during IPR. The court, citing *Star Envirotech*, agreed with GoPro that it was not estopped from using the real-world prior art, as "GoPro avers that the product itself has

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[73] Acceleron, LLC v. Dell, Inc., 2020 WL 10353767 at *3 (N.D. Ga. Mar. 30, 2020).
[74] 2015 WL 4744394 (C.D. Cal. Jan. 29, 2015).
[75] *Id.* at *1.
[76] US PAT 6526808.
[77] *See Star Envirotech*, 2015 WL 4744394 at *3–4.
[78] *Id.* at *4.
[79] *Id.*
[80] *Id.*
[81] 2020 WL 109063 (D. Del. Jan 9, 2020).
[82] *Id.* at *6.
[83] *Id.*

functionality that was not reflected in the GoPro Sales Catalog used during IPR," and "as long as this is true, GoPro is not estopped."[84]

b. Substantive Difference

The substantive difference standard undertakes a more holistic inquiry that does not tie itself to specific patent claims, but instead analyzes whether some germane difference exists between the paper and real-world prior art. This approach operates at the level of the theory argued, while the superior and separate standard operates at the level of the piece of prior art.

Recall the hypothetical hyper-responsive on-off button included in the camera's sales catalog. Now, imagine that the device is asserted to show that the hyper-responsive switch utilizes touch sensitivity and has a response time of one-eighth of a millisecond. Under the superior and separate standard, estoppel would still apply. The button on the camera is the button being described in the catalog. But estoppel might not apply under the substantive difference standard. This is because the catalog simply referenced the switch without explaining its features further, whereas the argument being made now is different—it focuses on sensitivity and response time. (Of course, sensitivity and response time would have to be germane to the case in some fashion or else the camera would not be *substantively* different.)

In *Cal. Inst. of Tech. v. Broadcom Ltd.*,[85] in the course of a patent infringement suit, the District Court for the Central District of California confronted the question of whether statutory IPR estoppel can preclude a party challenging a patent from arguing that the patent was non-novel or obvious using a reference related to a printed publication that could have been asserted in the IPR.[86] The court declined to apply any standard "that would require, for instance, that certain claim limitations be independently satisfied by prior art in a way that is different from an associated prior art patent or printed publication," noting that the "statute does not include such requirements, and they would likely extend the reach of statutory IPR estoppel beyond its intended scope."[87] While the court did not believe that an invalidity theory needs to provide disclosure of an independent claim limitation not provided by the printed publication, it did clarify that "there must be *some substantive* difference between the two theories that is germane to the invalidity dispute at hand."[88] The court felt that the superior and separate standard went too far, as "redundant" prior art grounds do appear commonly in patent litigation.[89] The focus should instead be on an attempt "to discern if a patent challenge is simply swapping labels for what is otherwise a patent or printed publication invalidity ground."[90]

Building upon this, the court in *DMF, Inc. v. AMP Plus, Inc.*[91] provided reasoning similar to that used in *Caltech* and further explained that the question should be about what a party is trying to do through its challenge. In an infringement suit over a patent for recessed lighting, DMF argued that ELCO, the other party in this case, was estopped from asserting prior art invalidity grounds based on a physical product because ELCO did not show that the physical product raised any issues

[84] *Id.*
[85] 2019 WL 8192255 (C.D. Cal. Aug. 9, 2019), *aff'd*, 25 F.4th 976 (Fed. Cir. 2022).
[86] *See id.* at *6.
[87] *Id.* at *7.
[88] *Id.* at *8 (emphasis in original).
[89] *Id.* at *7.
[90] *Id.*
[91] 2021 WL 6499980 (C.D. Cal. May 5, 2021).

different from those that it did or could have raised in the IPR.[92] In its analysis, the District Court for the Central District of California emphasized *Caltech's* conclusion that the superior and separate reference standard "appear[s] to apply a higher standard than is contemplated by the IPR statute."[93]

The *DMF* court found instead that the relevant question is whether the patent challenge was simply swapping labels in order to bypass estoppel and "cloak" its prior art ground, and thus applied the substantive difference standard.[94] To the court, ELCO's argument that it independently relied on its product was persuasive, because the catalog descriptions of the product did not disclose its features.[95] Under a superior and separate standard, the catalog descriptions would likely have been found to have disclosed the features arguably disclosed by the product, and the inquiry would have focused on whether the new argument spoke to something that hadn't been at all described in the catalog. Instead, applying the substantive difference standard, the court found that the product was "substantively, germanely different" for three of the disputed grounds.[96]

Just as courts on the form side of the split have turned to the AIA's text, so too have courts on the substance side. In *Wasica Fin. GmbH v. Schrader Int'l, Inc*,[97] Wasica brought an action against a competitor, alleging infringement of a patent for a sensor that monitors air pressure in the air chamber of pneumatic tires.[98] The court noted that 35 U.S.C. § 312(a)(3) "identifies as separate requirements to be included in an IPR petition 'the *grounds* on which the challenge to each claim is based, and the *evidence* that supports the grounds for the challenge to each claim.'"[99] This usage illustrates that "the Patent Act distinguishes between grounds and evidence," and "[s]ince the estoppel provision, § 315(e)(2), applies to *grounds*, a petitioner is estopped from proceeding in litigation on those *grounds*, even if the *evidence* used to support those grounds was not available to be used in the IPR."[100] In this case, the court found that estoppel applied because the products disclosed the same claim elements, and, thus, all of Schrader's obviousness grounds reasonably could have been raised during the IPR.[101] The *Wasica* court's construction of the statute presents an excellent contrast to that in *Chemours*, as it comes out the other way utilizing the grounds versus evidence distinction.

These cases illustrate how courts considering whether a party is estopped from asserting a piece of real-world prior art, such as a device, undertake an individualized inquiry into whether there is a germane difference between the device and paper prior art. These courts appear to be attempting to limit the same infringement arguments from being litigated twice, but to still allow a device to be raised in the district court proceeding when it is bringing something useful and different to the litigation.

Courts have worried that the superior and separate standard's focus on the references themselves risks unduly expanding estoppel.[102] Indeed, the camera hypothetical above illustrates how a simple descriptor like "button" would, under the superior and separate standard, foreclose

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[92] *Id.* at *3.

[93] *Id.* at *4.

[94] *Id.*

[95] *Id.* at *5.

[96] *DMF*, 2021 WL 6499980 at *5–6.

[97] 432 F. Supp. 3d 448 (D. Del. 2020) (collecting cases), *appeal dismissed*, 2020 WL 8374870 (Fed. Cir. Sept. 24, 2020).

[98] *Id.* at 451.

[99] *Id.* at 454 (emphasis in original).

[100] *Id.*

[101] *Wasica*, 432 F. Supp. 3d at 455.

[102] *Caltech*, 2019 WL 8192255, at *7 ("The statute does not include such requirements, and they would likely extend the reach of statutory IPR estoppel beyond its intended scope").

subsequent arguments that do present something relevantly different for a court to consider. The superior and separate standard "ignores a commonly found practice in patent litigation: using one prior art reference to meet the same claim limitations in a number of different invalidity arguments."[103] The substantive difference standard allows for a balancing of efficiency with litigants' interest in obtaining a fair review of their arguments.

PART II: STATUTORY INTERPRETATION AND MAKING SENSE OF THE SPLIT

With the district court split explained, the AIA itself may be examined to determine which approach should be adopted. The two main camps that district courts have fallen into on this question—form versus substance—are a product of the statutory ambiguity in defining the term "ground."[104] Indeed, the AIA does not explicitly define it, thus allowing this issue to arise. This Part has two main objectives. The first is to conduct a textual analysis of the relevant statutory provisions that aims to elucidate how the text has led the district courts to arrive at opposite interpretations. The second is to explore the Act's purpose. This Part concludes that a statutory interpretation supports the adoption of the substantive difference approach.

A. Undertaking a Textual Analysis

1. Relevant Statutory Provisions

The primary provision at issue in this split is 35 U.S.C § 315(e), which establishes estoppel in district court litigation after parties have gone through IPR proceedings. Section 315(e)(2) states,

> [t]he petitioner in an inter partes review of a claim in a patent under this chapter that results in a final written decision [. . .] or the real party in interest or privy of the petitioner, may not assert either in a civil action [. . .] that the claim is invalid on any *ground* that the petitioner raised or reasonably could have raised during that inter partes review.[105]

An analysis of § 315(2) benefits from a comparison to 35 U.S.C § 312's language and usage of the term "ground." § 312(a)(3), which outlines the requirements of an IPR petition filed under § 311,[106] states that a petition must identify:

> in writing and with particularity, each claim challenged, the *grounds on which the challenge to each claim is based*, and the *evidence that supports the grounds* for the challenge to each claim, including—(A) copies of patents and printed publications that the petitioner relies upon in support of the petition; and (B) affidavits or declarations of supporting evidence and opinions, if the petitioner relies on expert opinions.[107]

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[103] Karpinski, *supra* note 70 at 342.

[104] 35 U.S.C. § 315(e).

[105] 35 U.S.C § 315(e)(2) (emphasis added).

[106] 35 U. S. C. § 311(b) states: "A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications."

[107] 35 U.S.C § 312(a)(3) (emphasis added).

Courts, like the district court in *Wasica*, have utilized the language in § 312(a)(3) to conclude that "ground" should be interpreted based on substance, and understood to mean "argument," because of the distinction made between grounds on which the challenge to each claim is based and the evidence that supports the grounds.

2. A Textual Analysis

A textual analysis reveals two plausible interpretations of the term "ground," each of which aligns with the form or substance side of the split. This section explains both and argues that the better interpretation—the one adopted by the substance-based camp—rests upon an analysis that takes into account the entirety of the text rather than just a single provision.

Courts on the form side of the split have narrowly interpreted the § 315(e) estoppel provision. Recall the *Chemours* court's analysis of the estoppel provision: "any invalidity theory relying upon [a] product as a prior art reference is not a 'ground' that reasonably could have been raised during the IPR" because "a prior art product cannot be used as a reference to challenge the validity of a patent claim in an IPR."[108] Here, "ground" is being interpreted as referring to what was presented during IPR. A device could not have been raised during IPR. Therefore, a device is not a ground that was raised, and nor could it reasonably have been raised. So, under this interpretation, estoppel never applies to real-world prior art like devices. This narrower, textualist reading has the strength of adhering closely to the provision's words. Section 315 does not distinguish grounds from anything else, and § 311 is clear that IPR is limited to "prior art consisting of patents or printed publications."[109] The statute, then, does not explicitly provide an indication that real-world prior art is subject to estoppel, and a lack of support in the text for finding estoppel has made courts wary of extending it.

However, per the Whole Act Rule, a canon of statutory interpretation widely used by courts, statutory text should be construed as a whole.[110] Because a statute generally contains interrelated parts, the entirety of the document provides context for each of these individual—but interrelated—parts.[111] Typically, "only one of the possible meanings that a word or phrase can bear is compatible with use of the same word or phrase elsewhere in the statute."[112] If this is true—and it makes good sense to take it as such—then the interpretation of §§ 311 and 312(a)(3) is relevant to the interpretation of § 315(e)(2).

The *Wasica* court's statutory interpretation of § 312(a)(3) underscores how the substantive view takes on this more holistic interpretive methodology. According to *Wasica*, § 312(a)(3)

> identifies as separate requirements to be included in an IPR petition 'the *grounds* on which the challenge to each claim is based, and the *evidence* that supports the grounds for the challenge to each claim.' In this way, the Patent Act distinguishes between grounds and evidence. Since the estoppel provision, § 315(e)(2), applies to *grounds*, a petitioner is estopped from

[108] *Chemours*, 2022 WL 2643517 at *2, *citing* Medline Indus., Inc. v. C.R. Bard, Inc., 2020 WL 5512132, at *3 (N.D. Ill. Sept. 14, 2020).

[109] 35 U.S.C. § 311(b).

[110] *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 167 (West Group, 2011).

[111] *Id.*

[112] *Id.* at 168.

> proceeding in litigation on those grounds, even if the evidence used to support those grounds was not available to be used in the IPR.[113]

As the statutory text shows, "grounds" and "evidence" are, in fact, distinguished. The phrase "grounds on which the challenge to each claim is based," juxtaposed with, "and the evidence that supports the grounds for the challenge to each claim"[114] indicates that "grounds" are arguments for which "evidence" is offered as support. Again, this would mean, in application, that the estoppel provision's usage of "ground" refers to the arguments being raised. If estoppel applies to "any ground" (interpreted to mean "argument"), an assessment of substance in the later civil proceeding would be required. In essence, this all rests on the question of whether "ground" means a *piece of evidence* or an *argument*.

In addition, § 311(b) states that "[a] petitioner in an inter partes review may request to cancel as unpatentable [one] or more claims of a patent only on a *ground* that could be raised under section 102 [novelty] or 103 [obviousness] and only on the *basis* of prior art consisting of patents or printed publications."[115] Section 311's use of "basis," read in light of § 312, should be understood as an *evidentiary* basis, and its use of "ground" should be read to mean *argument*. If this is the case, then "ground" would have a consistent meaning in §§ 311, 312, and 315 that is distinct from "evidence" or "basis."

The distinction between "ground" and "evidence" must factor into how "ground" is interpreted in other sections of the statute. If "ground"—as it is used in §§ 311 and 315(e)(2)—is interpreted to mean evidence, then it would not be distinct from the word "evidence" used in § 312(a)(3). This provides a persuasive reason to believe that "ground" in § 315 means argument and should not be interpreted to mean evidence.

With all this in mind, the substantive difference approach is the most textually compelling method of resolving the district court split. Given the text's differentiation of the terms, "ground" should be interpreted to mean "argument" rather than "evidence." In contrast, the text of the AIA does not support the form approach. It would make little sense to equate "ground" and "evidence" when they are differentiated elsewhere in the statute—a differentiation that should inform how § 315(e)(2) is read. While it's true that parties cannot raise real-world prior art in an IPR, § 311(b)'s language—"only on the basis of prior art consisting of patents or printed publications"[116]—does not undermine the argument that if "ground" were interpreted to mean "evidence" rather than "argument," the word "evidence" as it is used in the statute would no longer be distinct.

B. The Purpose of Estoppel

The AIA's legislative history indicates that Congress wanted the estoppel provision to be drawn more broadly to avoid re-litigation of the same arguments in federal court. This suggests that the form approach wouldn't go far enough in furthering the purpose of estoppel. Two pieces of evidence support this idea: (1) that Congress applied estoppel to civil actions and (2) that it applied estoppel both to claims raised and that *could have been* raised in IPR proceedings. First, the provision at issue, § 315(e)(1)–(2), estops claims that have been decided by the PTAB in an IPR from being

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[113] Wasica Fin. GmbH v. Schrader Int'l, Inc 432 F. Supp. 3d 448, 454 (D. Del. 2020) (collecting cases), *appeal dismissed*, 2020 WL 8374870 (Fed. Cir. Sept. 24, 2020) (emphasis in original).

[114] 35 U.S.C § 312(a)(3).

[115] 35 U.S.C § 311(b) (emphasis added).

[116] 35 U.S.C § 311(b).

raised once again in front of both the USPTO and in civil actions.[117] If Congress had intended to allow the re-litigation of arguments that had already been adjudicated in an IPR, it would not have applied estoppel to civil actions. But, under the form approach, even if there is no substantive difference between the paper prior art asserted during the IPR and the real-world prior art a party seeks to use to substantiate a district court proceeding, then the same argument can be litigated twice. It seems unlikely that Congress, in crafting an Act that was intended to promote efficiency, would have wanted such an inefficient and duplicative outcome. The inclusion of the "civil actions and other proceedings" subsection to the provision makes clear that written decisions resulting from an IPR are meant to be a final say on that invalidity claim and streamline proceedings.[118]

Second, the AIA's legislative history indicates that the estoppel provision's inclusion of the "could have raised" phrase was both carefully considered[119] and emphasized, resulting in a strong estoppel provision that courts should maintain. Legislators proposed repealing the "could-have-raised" estoppel, which is a clearly expansive application of estoppel meant to reduce the likelihood of duplicative challenges.[120] But patent owners objected and the AIA preserved that estoppel application.[121] While the central concern of this Comment is the meaning of "ground," the legislative discussion surrounding the "could have raised" language is instructive in determining the legislative intent driving the statutory construction. IPR itself was intended to provide a more efficient and cost-effective alternative to district court proceedings. The legislative history of the Act is littered with references to the stronger estoppel standard that made its way into the final version of the Act. For example, Senate reports note the AIA's "higher threshold for initiating a proceeding" and "strengthened estoppel standard."[122]

Given that the legislative history of the AIA indicates that the goal of the IPR system is to avoid re-litigation of the same invalidity claims and same arguments, "ground" should be interpreted to mean "argument." And, with this, the substantive difference approach should be adopted to allow for determination of whether, in fact, the same *argument* is being raised twice. Construing the estoppel provision in a manner that would, as a bright-line rule, allow real-world prior art to be used in district courts to relitigate decided-upon claims would run counter to what the AIA aimed to accomplish with its strengthened estoppel standard. Still, it is worth considering the point—as made in *Chemours*—that if Congress intended for estoppel to apply to real-world prior art, it would have or could have stated that. However, the Chemours court misses addressing the purpose of AIA estoppel. It's fair to say that the best resolution of this question would be Congressional clarification. Absent that, however, courts should keep in mind the broad purpose of the statute: efficiency, which is supported by strong estoppel.

To be sure, estoppel should not be applied as a blanket rule. There are cases where the device being asserted does present something new for consideration and aids the party's argument in a way

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[117] 35 U.S.C § 315(e)(1)–(2).

[118] 35 U.S.C § 315(e)(2).

[119] *See* Matal, *supra* note 47, at 616–20.

[120] *See, e.g.*, 157 CONG. REC. S1326 (daily ed. Mar. 7, 2011) (statement of Sen. Sessions) ("The bill also includes many protections that were long sought by inventors and patent owners. It preserves estoppel against relitigating in court those issues that an inter partes challenger reasonably could have raised in his administrative challenge.").

[121] *See* 157 CONG. REC. S1367 (daily ed. Mar. 8, 2011) (statement of Sen. Kohl) ("Patent protection will be stronger with the inclusion of 'could have raised' estoppel [and] strong administrative estoppel.").

[122] *See* 157 CONG. REC. S952 (daily ed. Feb. 28, 2011) (statement of Sen. Grassley). *See also America Invents Act: Hearing on H.R. 1249 Before the Subcomm. on Intellectual Prop., Competition, and the Internet of the H. Comm. on the Judiciary*, 112th Cong. 52 (2011) (statement of Rep. Zoe Lofgren) ("[T]here is significant disincentive to bring an action because in the litigation, anything that could have been raised can't be used.").

that was not (and could not reasonably have been) addressed during the IPR. For example, the court in *GoPro* determined that GoPro's product averred functionality not reflected in the paper prior art, demonstrating that there was something new to litigate. This would, therefore, be a new argument—or, a new "ground"—to raise, and estoppel should not apply. The substantive difference approach results in both the most equitable interpretation and application of § 315(e)(2), and the distinction between "grounds" and "evidence" in the text ensures that new grounds can still be raised. The system should ensure that patent validity claims are fairly and thoroughly litigated. And, to the extent that a device may offer an analysis that would simply not be possible to conduct with paper prior art alone during an IPR, a party will not unduly receive another bite at the apple but would instead be given the opportunity to fully flesh out their claim in the civil proceeding.

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Law Review/Journal	**Yes**
Journal(s)	**Harvard International Law Journal - Subciter** **Harvard Law and Policy Review - Junior Editor** **Harvard International Law Journal - Subciter** **Harvard Law and Policy Review - Junior Editor**
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The Honorable Jamar K. Walker
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June 12, 2023

Dear Judge Walker,

I am a second-year student at Harvard Law School writing to apply for a clerkship position in your chambers for the 2024-2025 term. As an aspiring public interest lawyer hoping to engage in strategic advocacy and litigation serving immigrant communities, your background in public service is of special interest to me. Enclosed are my resume, writing sample, and law school transcript. Letters of recommendation from the following Harvard faculty will be sent separately; they are open to inquiry in the meantime.

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I have honed my legal research and writing skills through my work for the Harvard Refugee and Immigrant Clinical Program and Northwest Immigrant Rights Project, where I draft varied documents for litigation, including amicus briefs, complaints, reply briefs, and immigration filings. I have also worked for the ACLU's Immigrants' Rights Project, where I wrote research memoranda on complex emerging issues in administrative law, immigration law, and civil procedure.

If there is any additional information that would be helpful to you, I would be happy to provide it. Thank you very much for your time and consideration.

Sincerely,

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M.A. in Migration Studies, September 2021 | Fulbright Scholarship
Honors: Graduate with Distinction
Dissertation: *The Discursive Construction of LGB Asylum Seekers in US Circuit Court Decisions*

RICE UNIVERSITY, Houston, TX
B.A. in Economics and Public Policy, May 2020
Honors: Trustee Distinguished Scholarship
Abraham Broad Exchange Scholarship (Trinity College, Cambridge)

EXPERIENCE

NORTHWEST IMMIGRANT RIGHTS PROJECT, *Impact Litigation Intern,* Seattle, WA Summer 2023
Researching and writing portions of complaints and briefing for ongoing litigation. Cases include family separation and fourth amendment violation damages actions, an agency delay mandamus action, and detention center conditions litigation. Researching and drafting six asylum cover letters for an Afghan family.

HARVARD IMMIGRATION AND REFUGEE CLINIC, *Student Participant,* Cambridge, MA Winter, 2023 – present
Researching and drafting briefing and motions for ongoing district court litigation about immigration detention conditions, medical abuse, and visa revocation. Monitoring and evaluating First Circuit petitions for review for prospective intervention.

ACLU, IMMIGRANTS' RIGHTS PROJECT, *Legal Intern,* New York, NY Summer, Fall 2022
Researched and wrote memoranda on administrative law questions for ongoing and prospective litigation on federal immigration policy. Work centered on *Accardi* claims, 8 U.S.C. 1252(f)(1) and the implications of *Garland v. Aleman Gonzalez,* state civil rights statutes, and civil procedure.

HARVARD IMMIGRATION PROJECT, *Policy Team Member*, Cambridge, MA Fall 2021 – present
Interpreting client meetings for the Harvard Immigration and Refugee Clinic. Prepared and translated know-your-rights materials on the National Qualified Representative Program (NQRP) for sessions with direct services organizations.

TAHIRIH JUSTICE CENTER, *Interpreter & Translator*, Houston, TX Spring 2018 – Fall 2021
Interpreted asylum interviews and proceedings, client-attorney interactions, and support groups. Translated documents for use in asylum cases and other immigration procedures.

RICE UNIVERSITY, *Research Assistant, Professor Kerry Ward*, Houston, TX Spring – Fall 2020
Researched the development of anti-trafficking networks and organizations in Texas and shifts in organizational mandates, funding, and media discourse surrounding the passage of the Trafficking Victims Protection Act.

MADRE, *Human Rights Advocacy Program Intern*, New York, NY Summer 2018
Compiled crimes against humanity cases against 1,804 former ISIS officials in Iraq with evidence from 4,383 victims. Assisted in drafting successful campaign on gender language in the upcoming Crimes Against Humanity Treaty.

PERSONAL

Native Spanish speaker. Interested in long-distance biking around Boston, book collecting (constrained writing and the Oulipo group), playing piano, and editing Wikipedia.

Harvard Law School

Date of Issue: June 6, 2023
Not valid unless signed and sealed
Page 1 / 2

Record of: Tomas Arango
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program

Fall 2021 Term: September 01 - December 03

1000	Civil Procedure 6 Rubenstein, William	P	4
1001	Contracts 6 Bar-Gill, Oren	P	4
1002	Criminal Law 6 Rabb, Intisar	H	4
1006	First Year Legal Research and Writing 6A Francus, Michael	P	2
1005	Torts 6 Hanson, Jon * Dean's Scholar Prize	H*	4

Fall 2021 Total Credits: 18

Winter 2022 Term: January 04 - January 21

1051	Negotiation Workshop Todd, Gillien	CR	3

Winter 2022 Total Credits: 3

Spring 2022 Term: February 01 - May 13

1024	Constitutional Law 6 Stephanopoulos, Nicholas	H	4
2084	Family Law Halley, Janet	P	3
1006	First Year Legal Research and Writing 6A Francus, Michael	P	2
1003	Legislation and Regulation 6 Renan, Daphna	P	4
1004	Property 6 Fisher, William	P	4

Spring 2022 Total Credits: 17
Total 2021-2022 Credits: 38

Fall 2022 Term: September 01 - December 31

2000	Administrative Law Freeman, Jody	P	4
2264	Citizenship Neuman, Gerald	CR	1
2844	Communication, Law and Social Justice Jenkins, Alan	P	4
2423	Human Rights and International Law Neuman, Gerald	H	3

Fall 2022 Total Credits: 12

Winter 2023 Term: January 01 - January 31

2249	Trial Advocacy Workshop Sullivan, Ronald	CR	3

Winter 2023 Total Credits: 3

Spring 2023 Term: February 01 - May 31

2651	Civil Rights Litigation Michelman, Scott	P	3
8020	Harvard Immigration and Refugee Clinic Ardalan, Sabrineh	H	4
2115	Immigration and Refugee Advocacy Ardalan, Sabrineh	H	2
2466	Immigration Law Neuman, Gerald * Dean's Scholar Prize	H*	3
3018	Strategic Litigation and Immigration Advocacy Ardalan, Sabrineh	H	2

Spring 2023 Total Credits: 14
Total 2022-2023 Credits: 29

Fall 2023 Term: August 30 - December 15

2597	Crimmigration: The Intersection of Criminal Law and Immigration Law Torrey, Philip	~	2
3236	Deliberation Nesson, Charles	~	3
2086	Federal Courts and the Federal System Goldsmith, Jack	~	5
2169	Legal Profession: Public Interest Lawyering Wacks, Jamie	~	3
2319	Theories About Law Sargentich, Lewis	~	2

Fall 2023 Total Credits: 15

continued on next page

Harvard Law School

Record of: Tomas Arango

Date of Issue: June 6, 2023
Not valid unless signed and sealed

Spring 2024 Term: January 22 - May 10

2048	Corporations Hanson, Jon	~	4
		Spring 2024 Total Credits:	4
		Total 2023-2024 Credits:	19
		Total JD Program Credits:	86

End of official record

HARVARD LAW SCHOOL
Office of the Registrar
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~~

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

~~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)
Magna cum laude Next 10% of the total class following *summa* recipients
Cum laude Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a Clinical Professor of Law at Harvard Law School and Director of the Harvard Immigration and Refugee Clinical Program (HIRCP). I had the pleasure of becoming acquainted with Tomas Arango through his participation in the Strategic Immigration Litigation course and the Immigration and Refugee Advocacy Seminar and Clinic in the spring of 2023, as well as through his work with me as a research assistant and his participation in the HLS Immigration Project (HIP), a student practice organization during his 1L year. In these capacities, I have been able to assess Tomas's legal research, analytical, and writing skills, all of which are top-notch. He is very bright and a pleasure to work with. For these reasons, I believe he would be an outstanding judicial law clerk.

Tomas excelled in both classes I taught, receiving Hs for his thoughtful contributions in class, his clear and persuasive final papers, as well as his insightful reflection papers and blog posts. As a HIRC clinical student, Tomas demonstrated himself to be a stellar advocate. He tackled multiple cases involving a diverse array of legal issues, from a successful amicus brief filed with the Fourth Circuit in support of a gender asylum case, to a brief in opposition to a motion to dismiss immigration class action litigation filed in district court, from monitoring Petitions for Review at the First Circuit to drafting an innovative motion to amend in district court related to protections under the Violence Against Women Act and researching toxic land issues as they related to a potential challenge to the ongoing use of an immigration detention facility. With all of these cases, he had to contend with learning complicated new areas of law, while at the same time balancing competing goals and demands on his time given his wide range of clinical projects, and he did so flawlessly.

Tomas sets himself aside from his peers with his excellent research and writing skills. He takes particular care to make sure that every written work product—from legal memos to briefs— is written in a clear and compelling manner. Tomas is highly self-motivated, even when presented with challenging and unfamiliar areas of the law.

Tomas excels at working both independently and in a team. He collaborated exceptionally well with the student he was paired with in reviewing petitions for review filed with the First Circuit and the underlying Board of Immigration Appeals decisions, ensuring that the work product they produced together reflected their best collective effort. Without their seamless team work, it would not have been possible to successful launch and bring to completion the Petition for Review monitoring project, aimed at expanding access to counsel for pro se litigants in the circuit court and providing amicus support in cutting-edge cases.

In addition Tomas is adept at working independently, which he did on both the Fourth Circuit amicus brief and the motion to amend in the District Court, with little supervision or guidance—effectively completing research assignments and drafting projects that required little editing or follow up after the fact.

Prior to his 2L year, I became acquainted with Tomas because of his deep commitment to immigration issues and his excellent work with both HIRCP and HIP. He interpreted for clients in HIRCP and volunteered as a policy member of HIP, through which he prepared and translated know-your-rights presentations for community organizations on access to counsel for immigrants suffering from mental illness. Often non-graded activities are the first to be cut from students' plates when the rigors of the first-year curriculum kick-in, but Tomas excelled at juggling both his coursework and volunteer work with HIP. Tomas also came to meet with me his 1L year about his research interests and his Master's in Migration Studies, and I was so impressed with his thoughtful analysis that I offered him a research assistant position. Tomas excelled as a research assistant for me, helping me to bring several long-outstanding projects on EU border externalization and the development of new asylum systems in North Africa closer to completion. He came to all of our meetings prepared and offered smart and cogent reflections on existing research and drafts, conducted a thorough literature review and flagged possible areas for further developing the research projects.

At every turn, Tomas has time and again shown his deep support for human rights and immigration advocacy. During college, he volunteered extensively with Tahirih Justice Center, interpreting for asylum interviews and proceedings and translating documents. He also previously worked at MADRE, where he focused on advocacy related to international crimes against humanity in Iraq. His advocacy at Rice University on behalf of the Undocumented Students Working Group led to a successful change in university policies related to housing and police inquiries for undocumented students. More recently, his internship with the ACLU during his 1L summer and fall of 2L year afforded him the opportunity to engage in cutting edge research related to prospective litigation on behalf of immigrants. Tomas's family history drives his commitment to these critical issues.

In sum, I am impressed by Tomas both as a person and as a future attorney. Tomas's careful attention to detail, sharp intellect, and strong legal analysis and writing skills, as well as communication and listening skills will serve him well in a judicial clerkship. I am certain that Tomas would be an outstanding addition to your chambers, and it is without reservation that I recommend him to you.

I hope this letter is helpful to you. Please do not hesitate to contact me if I can provide additional information. I can be reached at sardalan@law.harvard.edu or 617-384-7504.

Sabrineh Ardalan - sardalan@law.harvard.edu - 617-384-7504

Sincerely,
Sabi Ardalan
Director, Harvard Immigration and Refugee Clinical Program
Clinical Professor of Law, Harvard Law School

Sabrineh Ardalan - sardalan@law.harvard.edu - 617-384-7504

May 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write on behalf of Tomás Arango, who has applied to you for a clerkship position. Tomás is smart, insightful, great to work with, and public-interested. I am happy to recommend him very highly.

I first met Tomás in the fall of 2021, when he was one of the very brightest lights in my Torts class. In several ways, Tomás stood out. He was well prepared, engaged, and enthusiastic about the course. His comments were insightful, on point, and constructive, and his work for the course was spectacular, including his exam, which was the best in the class, and one of the best exams that I have read in several years. He received a Dean's Scholar Prize for the course.

In addition, during the semester, I met with Tomás numerous times during my office hours, when I had the opportunity to get to know him better and to learn about his remarkable background and aspirations for the future. In those conversations, he often asked for additional readings that I might recommend – and later we would discuss the books he'd read based on my recommendations. In those conversations, I was struck by Tomás's preternatural wisdom and depth; I felt at times that I was in conversation with a thoughtful colleague, not a first-year law student. More important, I was impressed by how Tomás's prodigious appetite for learning had less to do with academic mastery and more to do with the value of ideas based on their relevance for helping to build a more just world.

Based upon those experiences, I invited Tomás to serve on a team of research assistants during the spring of his 1L year. Tomás immediately proved to be a first-rate research assistant. My co-author and I assigned draft sections of a large work in progress to the different research assistants, asking them to offer substantive and stylistic feedback, to find and fill in factual support for (or against) our arguments, and to complete citation details. Tomás was one of the few students to whom we gave the largest and most difficult assignments, reflecting the fact that he is a quick learner and an independent problem solver and that his work was exceptional — painstaking, reliable, and thorough. Last summer, I enlisted Tomás's as one of two research assistants to help on another project, and, again, his contributions were exemplary and invaluable.

Tomás is one of the more impressive, smart, talented, thoughtful, and likable students who I have had the pleasure of teaching and working with. His commitment to public interest work—more specifically, to pursuing a litigation career working with and for immigrant communities—is especially commendable, in my view. He is the sort of student whose career I look forward to watching, not only because of his skills as a lawyer, but also because of his earnest commitment to doing his part to advance justice and to make the world a better place. He personifies the sort of student who I am most grateful to have the privilege of teaching and mentoring.

Based on those experiences, I am delighted to recommend Tomás highly and am confident that he would be a first-rate law clerk in almost any chambers. I hope you will give his application your most serious consideration.

Sincerely,

Jon D. Hanson

Alan A. Stone Professor of Law

Jon Hanson - hanson@law.harvard.edu - 617-496-5207

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Tomás Arango, a student at Harvard Law School, who is applying to you for a clerkship. I recommend him to you strongly.

I have gotten to know Tomás unusually well over the past year – he was a student in three of my courses, and performed superbly in all of them. Aside from these formal exchanges, we had several long conversations in my office hours.

In the fall of 2022, Tomás took “Human Rights and International Law” and the reading group on Citizenship. The basic subject of the former is human rights, but it also covers relevant parts of U.S. constitutional law and the relationship between the United States and the international legal regimes. Tomás was an active (not overactive) participant in the class, always well-prepared, analytically skilled, and insightful in the questions he asked as well as in the answers he gave. His written exam was splendid, very near the top of the class. The exam included both a standard law school hypothetical case and a more open-ended essay, and his answers to each were well-written, well-organized, and strongly argued.

The reading group was an ungraded seminar with discussion of various dimensions of citizenship from a series of perspectives – historical, philosophical, sociological, legal, and policy-based. Given the small size of the group and the emphasis on student engagement, nearly all the students spoke in every session. Tomás was, in qualitative terms, the leading contributor to the discussions, as a result of his close reading and careful analysis of the varied materials, and his ability to relate them to his own life experiences – he has traveled a lot for one so young. After these two courses, by the end of the fall semester I had formed quite a strongly positive impression of him.

In the spring semester, he took my course in Immigration Law. This is a U.S. domestic law course, with large doses of constitutional law and also administrative law and statutory interpretation, in a notoriously difficult and disputed policy context. Tomás shined even more in that classroom, and also wrote the best exam, earning the equivalent of an A+. His performance had all the same virtues as in the previous courses, this time within a dense statutory regime that generates numerous complex interactions across the semester. He acquired remarkable mastery of the legal framework that we were studying, and skill in applying it to particular factual situations, actual or hypothetical. His interventions in class also exhibited his strong concern for justice and for the role of the U.S. judiciary in preventing abuse of government power – an issue that he is keenly aware of in light of his own family’s experiences in other countries.

In terms of the personal characteristics that make a clerkship successful, Tomás would be a splendid clerk. In addition to all his legal skills, he has a lively intellect, is amiable in conversation, highly dedicated, and cheerful about hard work for the ends of justice. I have great confidence in him, and no reservations of any kind.

In short, I recommend Tomás Arango to you strongly.

Sincerely yours,

Gerald L. Neuman
J. Sinclair Armstrong Professor of International, Foreign and Comparative Law

Gerald Neuman - neuman@law.harvard.edu - 617-495-9083

Tomás Arango

29 Banks Street, Apt 2, Somerville, MA, 02144 | 713-459-4616 | tarango@jd24.law.harvard.edu

Writing Sample
Drafted Fall 2022

This writing sample was produced as part of my work for the ACLU's Immigrants' Rights Project as general research into the state of the law following the Supreme Court's decision in *Garland v. Aleman Gonzalez*, 142 S.Ct. 2057 (2022). To maintain confidentiality, and to obtain permission to use it for this purpose, I have modified it to remove references to specific prospective litigation. It is otherwise unedited by anyone else.

TO: My Khanh Ngo, Staff Attorney
FROM: Tomás Arango, Legal Intern
RE: Enforcing declaratory judgement after *Aleman Gonzalez*
DATE: December 2, 2022

QUESTIONS PRESENTED

What enforcement mechanisms exist for class action declaratory judgements? Are there any limits on these mechanisms for enforcement? Are there alternative mechanisms to class declaratory judgments we should consider?

BRIEF ANSWER

Motions under 29 U.S.C. § 2202 allow for further relief, including injunctions, when necessary and proper to enforce a declaratory judgment, and so are a promising vehicle for any class-wide relief we believe is still available after *Aleman*. There appear to be no substantial limits on this relief in terms of enforcement pending appeal or timeliness, though the motion is always brought before the court that issued the judgment in question. The standard for obtaining § 2202 relief is the vague "necessary or proper" test from the statute; we may need to show that the government will not (or has not) complied with the underlying declaratory judgment before a court grants further relief.

There are few examples of individual follow-on actions to enforce class declaratory judgments; these are usually the result of issue class actions under Rule 23(c)(4). Examples found so far involve individual actions for damages, however, so while there is no principled reason injunctive relief could not be sought, this also seems unusual. The reason is likely that 23(c)(4) classes generally serve to define questions of liability where remedies are financial and highly individualized. The sole exception is the *Brito* litigation discussed, which contemplated individual habeas petitions; the district court's judgment there was exactly what we would want for an issue class strategy, but the First Circuit reversed and seems hostile to this approach.

Actions for injunctive relief by groups of plaintiffs, but not petitioners, are also possible, and provide an avenue for preliminary relief. These groups are theoretically unlimited in size, though group injunctions will become increasingly obvious attempts to circumvent *Aleman* the larger they grow. These actions are inherently far costlier, more logistically challenging, and may be subject to higher evidentiary burdens than class-wide injunctions but there is no theoretical barrier to using them beyond the – admittedly very unfriendly – language in *Aleman* itself.

DISCUSSION

A. Background

Last term, the Supreme Court held in *Garland v. Aleman Gonzalez*, 142 S.Ct. 2057 (2022), that 8 U.S.C. § 1252(f)(1) bars injunctive class-wide injunctive relief. *Id.* at 2067. Given this limitation, we are exploring the enforceability of class-wide declaratory judgements. Theoretically, these may include both follow-on actions within the class vehicle as well as individual enforcement actions brought to vindicate the legal rights declared for the class. This presumes that class-wide declaratory judgments are still available post-*Aleman* despite caselaw suggesting they may not differ from

injunctions when against the government, *see e.g., Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) ("[A] declaratory judgment is, . . . where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court."); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"). Some circuit caselaw suggests optimism on this question is warranted specifically in the § 1252(f)(1) context. *Alli v Decker*, 650 F.3d 1007, 1009 (3rd Cir. 2011) (rejecting a district court holding that the statute "deprived the court of subject matter jurisdiction to entertain an application for *declaratory* relief on behalf of the plaintiff class.") (emphasis added); *Texas v. United States*, 40 F.4th 205, 219-20 (5th Cir. 2022) (emphasizing that § 1252(f)(1) is "'nothing more or less than a limit on injunctive relief'" in the vacatur context after *Aleman* was decided) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999)).

B. Enforcing Class Declaratory Judgments

a. 28 U.S.C. § 2202

i. Potential of § 2202 as an enforcement mechanism

28 U.S.C. § 2202, which is the second half of the Federal Declaratory Judgement Act, states that:

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such a judgment." 28 U.S.C. § 2202.

The hearing requirement in this provision is read to mean that the further relief "need not have been demanded, or even proved, in the original action for declaratory relief. . . . [A]ny additional facts which might be necessary to support such relief can be proved on the hearing provided in the section. . ." *Edward B. Marks Music Corp. v. Charles K. Harris Music Pub. Co.*, 255 F.2d 518 (2nd Cir. 1958) *cert denied* 358 U.S. 831 (citing *Security Ins. Co. of New Haven v. White*, 236 F.2d 215 (10th Cir. 1956); *accord Insurance Servs. Of Beaufort, Inc. v. Aetna Cas. and Sur. Co.*, 966 F.2d 847 (4th Cir. 1992); *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2nd Cir. 1998); *Westport Ins. Corp. v. Bayer*, 284 F.3d 489 (3rd Cir. 2002). That is, the range of what we may move for under § 2202 is independent of whatever we may or may not have sought as a remedy in the case before that point.

A motion for further relief may yield damages or equitable relief. Wright, A. Miller, and M. Kane, *Federal Practice and Procedure* § 2771 (4th ed. 2022). "It is well-settled that the district court may grant monetary relief in declaratory judgment proceedings, even without a specific request." *Illinois Physicians Union v. Miller*, 675 F.2d 151 (7th Cir. 1982) (citing *Freed v. Travelers*, 300 F.2d 395 (7th Cir. 1962)); *accord Texasteel Mfg. Co. v. Seaboard Sur. Co.*, 158 F.2d 90 (5th Cir. 1946); *Kornfeld v. Kornfeld*, 341 Fed.Appx. 394 (10th Cir. 2009). Attorney's fees or costs may also be awarded, but only if permitted by a separate statute; the Declaratory Judgments Act is not an independent basis for such awards. *Schell v. OXY USA Inc.*, 814 F.3d 1107 (10th Cir. 2016) *cert denied* 137 S.Ct. 376 (2016) *cert denied* 137 S.Ct. 446 (2016); *Continental Cas. Co. v. Assicurazioni Generali, S.P.A.*, 903 F.Supp 990 (S.D.W. Va 1995) (collecting cases). Other forms of damages such as restitution are likely available. *See e.g.*, *Allstate Indemnity Co. v. Dixon*, 932 F.3d 696 (8th Cir. 2019). However, because restitution, and other forms of monetary remedies like disgorgement (which is equitable) are of limited relevance to our cases they will not be discussed further here.

One circuit case, *Gant v. Grand Lodge of Texas*, 12 F.3d 998 (10th Cir. 1993), specifically contemplated further declaratory relief in the context of a court's equitable jurisdiction to construct wills. *Id. at 1003*. The most typical form of equitable remedy, however, is an injunction. Injunctions are further relief that can be predicated on a declaratory judgment. *Powell v. McCormack*, 395 U.S. 486, 499 (1969). Of course, while perhaps the most desirable form of relief, such an injunction will run up against the holding in *Aleman Gonzalez*, 142 S.Ct. 2057, that prompted this research in the first place if issued on a class-wide basis. A court could theoretically issue several injunctions corresponding to many individuals, though there are serious questions whether a court would do so at any scale given that it would veer perilously close to open disregard for the *Aleman* holding. This will be discussed below.

Grants of further relief are reviewed for abuse of discretion. *See Noatex Corp. v. King Const. of Houston, L.L.C.*, 732 F.3d 479, 488 (5th Cir. 2013); *Besler v. United States Dep't of Agric.*, 639 F.2d 453, 455 (8th Cir. 1981); *United Tchr. Assocs. Ins. Co. v. Union Lab. Life Ins. Co.*, 414 F.3d 558, 569 (5th Cir. 2005). The facts necessary to support such relief can be proven in the hearing that §2202 provides for. *Edward B. Marks*, 255 F.2d 518 (2nd Cir. 1958).

ii. Limitations on § 2202 as an enforcement mechanism

One potential limitation is our ability to secure enforcement pending an appeal; this is not a concern here. *See* My Khanh Ngo's memo "Enforcement of Declaratory Judgments Pending Appeal"; *cf Continental Casualty Corp. v. Indian Head Indus.*, 941 F.3d 828 (6th Cir. 2019) (holding district courts are not limited by the scope of a circuit court's remand from considering § 2202 motions).[1]

No time bar appears to exist either. Federal Rule of Civil Procedure 59(e) states that "a motion to alter or amend a judgement must be filed no later than 28 days after the entry of the judgment." Fed.R.Civ.P. 59(e). The relief provided by § 2202, however, is "further relief," which is distinct from altering or amending a judgment. *Cont'l Casualty Corp.*, 941 F.3d at 833-34 (6th Cir. 2019); *Horn & Hardart Co. v. Nat'l R.R. Passenger Corp.*, 659 F. Supp. 1258 (D.D.C. 1987) *cert denied*, 488 U.S. 849 (1988). Courts have long allowed further relief far after the time bars that the Federal Rules establish for other motions.[2] *See Besler v. U.S. Dept. of Agriculture*, 639 F.2d 453, 455 (8th Cir. 1981) (granting further relief where 20 months elapsed before petitioners sought it); *Edward B. Marks Music Corp.*, 255 F.2d 518 (reversing denial of further relief sought 11 years after declaratory judgment); *see also* Wright, A. Miller, and M. Kane, *Federal Practice and Procedure* § 2771 (4th ed. 2022) (§ 2202 "is broad enough to permit the court to grant additional relief long after the declaratory judgment has been entered, provided that the party seeking relief is not barred by laches."). Motions under § 2202 cannot circumvent statutory limits on the relief that the court can grant. *See e.g.*, *Christ v. Beneficial Corp.*, 547 F.3d 1292, 1299 (11th Cir. 2008) (reversing injunction and award of damages as restitution

[1] The Sixth Circuit had previously remanded this case to the district court "for further consideration of the question of Continental's liabilities [arising out of certain claims]". *Continental Casualty Corp*, 941 F.3d at 834. The district court held that this limited remand deprived it of authority to grant a § 2202 motion for damages but the Sixth Circuit held the opposite on appeal. *Id*.

[2] At the time of some of these older cases, Federal Rule of Civil Procedure 59(e) placed a 10-day, rather than 28-day limit on motions to alter or amend judgments. References in these cases to a 10-day timeliness requirement are references to Rule 59(e).

or disgorgement of fees because it circumvented the express remedies provided for by the Truth In Lending Act).

Though I have not found a rule statement as such, it does seem that at § 2202 motion is always brought before the court that issued the declaratory judgment in question. Related caselaw on jurisdiction pending and following appeal suggests that jurisdiction over the enforcement of a declaratory judgment remains with the original court. *See e.g. Burford Equip. Co. v. Centennial Ins. Co.*, 857 F. Supp. 1499, 1502 (M.D. Ala. 1994) (holding that § 2202 is an exception to the *Griggs* rule that an appeal divests the district court of jurisdiction); *GNB Battery Techs., Inc. v. Gould, Inc.*, 65 F.3d 615, 621 (7th Cir. 1995); *United Tchr. Assocs. Ins. Co. v. Union Lab. Life Ins. Co.*, 414 F.3d 558, 572 (5th Cir. 2005).

Finally, although declaratory judgments do not require actual harm, motions for further relief are not exempt from this requirement. *See United States v. Fisher-Otis Co.*, 496 F.2d 1146, 1151 (10th Cir. 1974) ("The essential distinction between a declaratory judgment action and an action seeking other relief is that in the former no actual wrong need have been committed or loss have occurred in order to sustain the action.") ; *Horne v. Firemen's Retirement System of St. Louis*, 69 F.3d 233, 236 (8th Cir. 1995); *Kunkel v. Continental Cas. Co.*, 866 F.2d 1269 (10th Cir. 1989). The justification for further relief "can be proved on the hearing provided in this section or in an ancillary proceeding if that is necessary." *Edward B. Marks*, 255 F.2d 518, 522 (2nd Cir. 1958). This standard is not quite the same as the standard for a preliminary injunction because the underlying question of law has already been decided. Instead, courts weigh hearings and briefing to decide whether the further relief meets the vague "necessary or proper" language from the statute. 28 U.S.C. § 2202; *see e.g.*, *Public Citizen v. Carlin*, 2 F. Supp. 2d 18 (D.D.C. 1998) (finding jurisdiction because the declaratory judgment was disregarded and issuing an injunction was "necessary and proper"); *Duberry v. District of Columbia*, No. 14-1258 (RC), 2020 WL 13337792, *1 (D.D.C. Feb. 28, 2020) (denying § 2202 relief because it was "neither necessary nor proper" as "Plaintiffs [did not show] that anything more from this Court is necessary to make the District abide by the Court's prior rulings"); *Kornfeld*, 341 Fed.Appx. at 396 ("Because relief need only be proper, it is irrelevant that there was no need for further relief. . .")(citation omitted). This means that obtaining relief may require a showing that the government will not – or better yet – has not complied with the declaratory judgment, which might limit the speed with which we can succeed on such a motion (see discussion of declaratory judgments against federal officers in part A).

b. Individual enforcement actions

Research into individual follow-on actions to class declaratory judgments has been challenging, slow, and found limited success. One early avenue of research was the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. This research has not yielded examples of follow-on litigation; conversations during the research process have prompted a turn away from damages as a form of enforcement and so FDCPA cases will not be discussed further.

i. Issue Class Actions

Classes certified for certain issues under Federal Rule of Civil Procedure 23(c)(4) – henceforth issue classes – serve to allow litigation on specific issues to proceed on a class-wide basis even when the full requirements of Rule 23 cannot be satisfied with respect to an entire claim. *See* Gilles, Myriam & Friedman, Gary, *The Issue Class Revolution*, 101 B.U. L. Rev. 133, 136 (2021) ("In essence,

the issue class decouples the inquiry into the defendant's conduct from questions regarding the eligibility of individual claimants for relief."). Issue classes for declaratory judgments are one promising form of litigation as they are often premised on the idea that individual follow-on cases are likely necessary for relief.

In *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417 (4th Cir. 2003), a district court certified an issue class with respect to certain claims in a case concerning a collapsed health insurance plan. *Id.* at 422. The Court wrote that class certification "provides a single proceeding in which to determine the merits of the plaintiffs' claims, and therefore protects *the defendant* from inconsistent adjudications." *Id.* at 427 (quoting 5 *Moore's Federal Practice* § 23.02 (1999) (emphasis in original). The "asymmetry of collateral estoppel" that refusing to certify the issue class would produce would ultimately be to the detriment of defendants, *id.*, and therefore any attempt by defendants to avert certification was likely "to keep Plaintiffs with relatively small claims out of court altogether – precisely the problem the class action mechanism was designed to address," according to the court *Id.* n. 4. This, and similar reasoning in other circuits, supports the certification of issue classes to facilitate the resolution of large numbers of cases with common elements.

"An issues-class approach contemplates a bifurcated trial where the common issues are tried first, followed by individual trials on questions such as proximate causation and damages." Manual for Complex Litigation (4th ed.) § 21.24. *See also Matter of Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1302-03 (7th Cir. 1995); *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 154 (2nd Cir. 2001); *see generally* Fed. R. Civ. Pro. 42(b). This means that a court enters a final judgment on the issue(s) that the class is certified for, and plaintiffs may then proceed with their individualized claims.

Issue classes that are certified for questions of liability or rights rather than relief (the pertinent category here) are generally brought and certified under 23(c)(4) because individualized damages determinations are needed; no such class – or putative class – I have encountered has contemplated follow-on actions for injunctive relief. *See e.g.*, *Good v. Am. Water Works Co.*, 310 F.R.D. 274, 296-99 (S.D. W.Va. 2015) (regarding contamination of water source by coal processing chemicals); *McReynolds v. Merrill Lych, Pierce, Fenner & Smith Inc.*, 672 F.3d 482 (7th Cir. 2012) (regarding claims of racial discrimination in employment)[3]; *In Re Telectronics Pacing Systems, Inc.*, 172 F.R.D. 271 (S.D. Ohio 1997) (regarding product liability claims). Though I've attempted to focus on actions unrelated to product liability and similar consumer claims, these are the bulk of caselaw on issue classes. Even when these suits are against public entities or involve civil rights claims, the follow-on actions contemplated are invariably for monetary, not injunctive, relief. The *Nassau* litigation discussed *infra* is presented as a typical case of issue class litigation against the government.

ii. *Brito*

The only case discovered so far in which non-monetary follow-on actions were contemplated is *Brito v. Barr*, 395 F. Supp. 3d 135 (D. Mass), *modified*, 415 F. Supp. 3d 258 (D. Mass. 2019), *aff'd in part, vacated in part, remanded sub nom. Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021). In that case, IRP and others brought a class action challenging procedures at immigration court bond hearings. The court certified a 23(b)(2) class – not an issue class. *Brito v. Barr*, 395 F. Supp. 3d at 149. This case

[3] In *McReynolds*, the putative class was for both a liability determination and class-wide injunctive relief. *MxReynolds*, 672 F.3d at 483. The follow-on actions contemplated were for monetary relief, and the court specifically contemplated "hundreds of separate suits for backpay [and other monetary remedies]". *Id.* at 492.

predates *Aleman* and so the court held that 8 U.S.C, § 1252(f)(1) did not bar declaratory nor injunctive relief for the class. *Id.* at 145. The court then declared that the bond procedures at hand were inadequate and so issued declaratory relief and a corresponding permanent injunction. *Brito v. Barr*, 415 F. Supp. At 271. In so doing, however, it explicitly contemplated the use of individual habeas petitions to challenge the continued detention of those subjected to the inadequate procedures, going so far as to require the government to "produce to class counsel certain information regarding each member of the Post-Hearing Class in order to facilitate individual habeas petitions challenging their continued detention." *Id.* at 263. It did so because whether individuals deserved new bond hearings was a highly individualized and fact-dependent inquiry that did not lend itself to class certification. *Brito v. Barr*, 395 F. Supp. 3d at 148. In short, the district court adopted almost exactly the same approach we would want a court to take in an issue class case, although a 23(b)(2) class was used here.

In doing so, the *Brito* court cited to *Reid v. Donelan*, F. Supp. 3d 201 (D. Mass. 2019), in which the same judge (C.J. Patti Saris) held that the mandatory detention provision of the INA violates due process when detention becomes "unreasonably prolonged," and issued an injunction stating the factors to be considered in the determination of detention length reasonableness. *Id.* at 228-29. The First Circuit reversed this decision on the merits in *Reid v. Donelan*, 17 F.4th 1 (1st Cir. 2021), and also rejected the district court's class certification. *Id.* at 11-12. The circuit court wrote that "[N]o precedent of which we are aware supports using a properly certified class as a bootstrap to then adjudicate, on a class-wide basis, claims that hinge on the individual circumstances of each class member." *Id.* at 11.

This suggests hostility on the part of the First Circuit to accept uses of class actions like that of the *Brito* court. Indeed, in *Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021), the First Circuit reversed the district court in every respect except the part of its declaratory judgment that prospectively declared a requirement that the government prove danger or flight risk by certain standards to deny noncitizens bond – that is, it vacated a declaration that immigration judges must consider ability to pay and alternatives to detention as well as both injunctions. *Id.* at 256-57. The circuit court's reversal of the class certification was a blow to the individual habeas petition strategy that the district court contemplated.

I have not come across habeas petitions based on *Brito* filed after the First Circuit judgment. Before the appeal was decided, however, at least ten habeas petitions were filed in the district of Massachusetts relying in part on the district court decision. *See e.g.*, *Osorio-Ramirez v. Hodgson*, 439 F. Supp. 3d 10 (D. Mass. 2020) (pending appeal); *Rubio-Suarez v. Hodgson*, No. 20-10491-PBS, 2020 WL 1905326 (D. Mass. Apr. 17, 2020); *Alsharif v. Donelan*, No. 20-30030-PBS, 2020 WL 3232476 (D. Mass. May 14, 2020).

iii. *In re Nassau County Strip Search Cases*

The *In re Nassau Country Strip Search Cases* litigation does not provide the examples we are looking for but does explicitly contemplate this sort of strategy; it is also a landmark case in the development of issue-class jurisprudence. The litigation arose out of a "blanket policy" of strip-searching newly admitted misdemeanor detainees in Nassau County. *In re Nassau County Strip Search Cases*, 461 F.3d at 222. The plaintiffs alleged violations of the Fourth, Fifth, Eight, and Fourteenth Amendment rights under the federal Constitution as well as of their rights under Article 1 § 12 of the New York State Constitution. *Id.* The defendants conceded their liability and a judgment to that effect was entered in

favor of the plaintiff class – which was a 23(c)(4) issue class. *Id.* at 224. The district court made a further judgment of general damages for all class members. *Augustin v. Jablonsky*, 819 F. Supp. 2d 153, 156 (E.D.N.Y 2011).

The liability judgment was a declaratory judgment of the sort that we might seek. Although the court did later decide on general damages, the defendants successfully moved to decertify the class for special damages – i.e. emotional distress damages. *Id.* In so doing, the court specifically contemplated appointing a Special Master to hold "mini-trials" to determine individual victims' emotional damages. *Id.* at 175. However, given that it doubted the efficiency of such a process relative to "requiring former class members to commence their own individual actions should they elect to pursue claims for special damages" it opted to simply decertify the class on the issue. *Id.* at 175-76. It further wrote: "Indeed, any strip search victim seeking special damages would have the benefit of a finding of liability on the part of the County and would need only present evidence as to their emotional distress damages." *Id.*

It is not difficult to imagine a similar holding that, taking the facts of *Aleman*, there is a declaration of law on the statute's requirement of bond hearings under certain circumstances and that individuals need only present evidence as to their qualification for said hearings in individual actions. On the other hand, the most obvious difference our *Aleman* hypothetical has with *Nassau* is that in *Nassau* there was a need for individualized determinations to set the amount of emotional damages due, so individual actions make a great deal of sense. Meanwhile, in *Aleman*, the remedy would be uniform, so the individual cases are plainly an attempt to work around the bar on class-wide injunctive relief rather than the natural method of resolving the claims.

A further problem is that I have found almost none of the follow-on litigation that the court contemplated. In *Stuart v. Cnty. Of Nassau*, No. 17-cv-6831DRHAKT, 2021 WL 1254550 (E.D.N.Y. Apr. 5, 2021), *aff'd*, No. 21-1187-cv, 2022 WL 2204177 (2nd Cir. June 21, 2022), an individual brought such an action. However, since the initial declaratory judgment was issued, the Supreme Court, in *Florence v. Bd. of Chosen Freeholders of Cnty. Of Burlington*, 566 U.S. 318 (2012) held that the sort of search at issue was not a constitutional violation. Given the intervening change in federal law, the district court vacated declaratory judgment as to the federal constitutional claims in *In re Nassau Cnty. Strip Search Cases*, 958 F. Supp. 2d 339 (E.D.N.Y. 2013). As such, the *Stuart* court dismissed the case as it found no federal constitutional claim and declined to exercise supplemental jurisdiction over the state constitutional claim. *Stuart*, 2021 WL 1254550 at *1.

The only other such follow-on case I've identified is *Lopez v. Nassau Cnty. Sheriffs Dep't*, No. 17-cv-3722DRHGRB, 2020 WL 7078535 (E.D.N.Y. Dec. 3, 2020), which was dismissed for failure to meet the statute of limitations. *Id.* at *4-5. Searches of citing references for the major opinions in the *Nassau* litigation in New York state courts have turned up no follow-on suits there. Conversations with Prof. Richard Clary – who teaches courses on complex and class action litigation – suggest that this is likely because the defendants quickly settled any additional suits brought.

C. Group Litigation and Injunctions

While several forms of injunctive relief are possible, as outlined above, the most conventional form we might seek is an order to the relevant agency requiring that they take some action on a class of cases, e.g., grant bond hearings, provide resources, reconsider denials, etc. One of the immediately apparent workarounds to the *Aleman* bar on class-wide injunctions of this sort is an

injunction encompassing a group of discrete, identified individuals rather than a categorically defined class. That is, bringing a case on behalf of two, ten, thirty, or even hundreds of named individuals. This is an attractive option because it would allow for preliminary relief as opposed to requiring litigating a case to completion as both § 2202 and individual follow-on actions to an issue class would. Note that this is an entirely separate approach from seeking enforcement of a class-wide declaratory judgment.

The most obvious challenge to doing so is the following section of the majority written by Justice Alito in the *Aleman* case: "A literal reading of that language [on the availability of individual injunctive relief] could rule out efforts to obtain any injunctive relief that applies to multiple named plaintiffs (or perhaps even rule out injunctive relief in a lawsuit brought by multiple named plaintiffs." *Aleman*, 142 S.Ct. at 2068. While that portion of the opinion – (II-B-2), which six justices signed on to – stated that "the Government [did] not advocate that [the Court] adopt such an interpretation and [it had] no occasion to do so in these cases" it is not difficult to imagine that, should such a case arise, the Supreme Court might easily hold this sort of relief is barred.

Rule 20 of the Federal Rules of Civil Procedure – "Permissive Joinder of Parties" – is the likely vehicle for such an action. Fed. R. Civ. Pro. 20. To be joined under Rule 20, there are two requirements: 1) a right asserted by each plaintiff or against each defendant must arise out of the same transaction or occurrence or series of transactions or occurrences and 2) some question of law or fact common to all the parties will arise in the action. Wright, A. Miller, and M. Kane, *Federal Practice and Procedure* § 1653 (3d ed. 2022). These requirements have been deemed satisfied in cases analogous to ones we might bring. *See e.g.*, *Jean v. Meissner*, 90 F.R.D. 658 (S.D. Fla. 1981) (allowing joinder of a class of Haitian plaintiffs and another class of Haitian petitioners in a habeas challenge to practices and procedures used by the INS in exclusion processing); *Alexander v. Fulton County, Ga.*, 207 F.3d 1303 (11th Cir. 2000) (upholding a district court's joinder of 18 officers against a county sheriff alleging race discrimination under § 1981, § 1983, and Title VII).

One disadvantage to proceeding in this way is that the burdens of multiple plaintiffs are significant. In *Boriboune v. Berge*, 391 F.3d 852 (7th Cir. 2004), the Seventh Circuit discussed whether group habeas petitions were appropriate in light of the Prison Litigation Reform Act (PLRA). *Id.* The details of that debate are not relevant here, but the court pointed out that the language of the PLRA limited the number of weak or frivolous claims allowed *in forma pauperis*, and asserted that plaintiffs exposed themselves to having such findings count against them because a "prisoner litigating jointly under Rule 20 takes those risks for *all* claims in the complaint, whether or not they concern him personally." *Id.* at 854-55. What specific risks this could pose for plaintiffs is a matter for further research; at the very least number-bars on certain motions under the INA may be worth looking into. Also, the rules of civil procedure require that all filings be served on all other plaintiffs, which can increase filing costs significantly. Fed. R. Civ. Pro. 5; *King v. U.S. Marshall Serv.*, No. 19-cv-1337-JPG, 2019 WL 6728893, *1 (S.D. Ill. Dec. 11, 2019).

Aside from the challenge that the language of *Aleman* itself poses, however, I have not found any formal limit on issuing injunctions concerning any number of individual plaintiffs. *See generally* Fed. R. Civ. Pro. 65. Logistically, obtaining an injunction for large numbers of plaintiffs may be difficult if a court requires that the test be satisfied with respect to each plaintiff. In *Adams v. Freedom Forge Corp.*, 204 F.3d 475 (3rd Cir. 2000), for example, over 100 plaintiffs sued over retirement benefits and moved for a preliminary injunction. They later sought class certification, but for the instant opinion the Third Circuit held that the plaintiffs needed not be treated as a class. *Id.* at 490-91. The

court further held that the eleven plaintiffs who testified at the preliminary injunction hearing did not all provide evidence of irreparable harm, and so vacated the district court's preliminary injunction with respect to those plaintiffs. *Id.* at 491. It also vacated the preliminary injunction with respect to all non-testifying plaintiffs and wrote:

> "In order to obtain a preliminary injunction that would apply to each one of them, the plaintiffs would have had to present affidavits or other evidence from which one could at least infer that each of them was so threatened. Instead, the plaintiffs only presented evidence from which a court could infer that some of them were threatened with harm. . . proof by association in a law suit, or proof by "common sense," will [not] suffice. *Id.* at 488.

The court explicitly rejected treating the plaintiffs as a class and held on that basis that even assertions that "most" of the plaintiffs suffered a risk of harm, it could not uphold the injunction as to plaintiffs who did not present evidence. *Id.* This does not entirely preclude an injunction for all plaintiffs, but significantly raises the evidentiary bar as proof through representatives that allows inferences about the rest of the class is not possible. *Id.* at 487. That said, the court did contemplate simple affidavits as a method of proof. *Id.* at 489.

Other similarly situated cases where courts have before them a collection of plaintiffs who have filed for class certification – but not yet resolved that matter – seeking an injunction are understandably rare. In a few, courts have chosen to treat the group as a class for this stage of proceedings, *see e.g.*, *Lapeer Cty. Med. Care Facility v. State of Mich. Through Dep't of Soc. Servs.*, 765 F. Supp. 1291 (W.D. Mich. 1991); *Hinckley v. Kelsey-Hayes Co.*, 866 F. Supp. 1034 (E.D. Mich. 1994), but this would be inapplicable in our case as we would be unable to seek injunctive relief as a class, and so no certification would be pending. In one case, *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261 (W.D. Mich. 1990), *aff'd*, 948 F.2d 1290 (6th Cir. 1991), the court similarly applied a class-like standard to grant a preliminary injunction where certification was pending but did so without explicitly recognizing that it was applying that standard because of the pending certification. This is, however, a flimsy basis on which to hope for such a standard ourselves and it seems that seeking an injunction for many named plaintiffs will require greater individualized evidentiary support than would doing so for a class. *See generally M.S. v. Dept. of Homeland Sec.*, No. 20-cv-1325, 2020 WL 7496498, n. 1 (D. Minn. Aug. 8, 2020) ("Most of the problems in this matter stem from the fact that the group habeas petition submitted by petitioners is necessarily unwieldy . . . . Moreover, the *Zadvydas* claims raised . . . turn on factual issues specific to each individual petitioner, such as the length of . . . detention, the date that the petitioner's removal order has become final, and the likelihood of . . . removal in the foreseeable future.").

While these sorts of group actions may be logistically difficult, I have not encountered any case in which a court has refused to act on grounds that there are too many individual plaintiffs. *See also* Fed. R. Civ. Pro. 20 (failing to mention any numerical limit on joinder). We should also bear in mind the Court's warning in *Aleman* about the literal meaning of 8 U.S.C. 1252(f)(1) and the fact that the larger a case seeking group-wide injunctive relief, the more blatantly it will seem a naked attempt to circumvent the Court's ruling.

D. The nature of injunctive relief.

This memo cannot address this question as priority research questions have expanded in other directions and because of time constraints. What sort of relief we might be able to obtain despite *Aleman*, including reporting, monitoring, and so on is an important question for future research.

As of writing, current sources for briefing on the scope of the "enjoin or restrain" language from 8 U.S.C. § 1252(f)(1) include:

- Briefing by Public Citizen in the immigration priorities case argued this week at the Supreme Court (captioned *Texas v. United States*, 40 F.4th 205 (5th Cir. 2022) below) arguing that § 1252(f)(1) doesn't bar APA § 706 vacatur as a remedy.
- Our petition for *en banc* review in *Dubon Miranda*, arguing that § 1252(f)(1) places on limit on declaratory relief and is a remedial – not jurisdictional – limitation.
- The NYCLU memo on the availability of reporting under 28 U.S.C. § 2202 arguing that reporting is less restrictive than conventional remedial injunctions allowed under § 2202. After *Aleman,* this argument may not hold.
- Tomas Arango and Lily Novak's August 5 memo on APA § 705 relief after *Aleman* outlining arguments that a) all forms of § 705 relief are unavailable after *Aleman* and b) that § 705 stays, though not injunctions, are still available.

CONCLUSION

This preliminary research has not turned up any insurmountable barriers to our three proposed alternatives to class-wide injunctive relief: § 2202 motions, individual follow-on actions to issue class declaratory judgments, and group litigation for injunctions. Each method, however, suffers from significant drawbacks. § 2202 motions would require litigating a case to completion and may also require that we show further relief is "necessary or proper,' which – given courts' understanding of declaratory judgments against federal officers as essentially injunctive – may mean we cannot obtain relief until we demonstrate that the government has failed to comply with a declaratory judgment. Individual follow actions are almost completely unprecedented outside of suits for monetary relief. There are no theoretical barriers to this strategy, though it would require litigating a case to completion and then bringing numerous other suits. Further, the most closely analogous caselaw does not inspire confidence; the First Circuit, at least, seems hostile to this approach . Finally, group litigation for injunctions suffers from the primary defect that the *Aleman* majority itself cautioned the court is likely willing to bar them. These suits are also logistically complex, more expensive, and may face heightened evidentiary burdens compared to class injunctions.

Some questions for further research include how organizational plaintiffs might be able to enforce declaratory judgments and more on the nature of relief that falls within the "enjoin or restrain" bar in *Aleman*.

Applicant Details

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JD/LLB From	**Boston University School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=12202&yr=2009**
Date of JD/LLB	**May 12, 2024**
Class Rank	**25%**
Law Review/ Journal	**Yes**
Journal(s)	**Boston University Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Edward C. Stone Moot Court** **Homer Albers Prize Moot Court**

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Prior Judicial Experience

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Organizations	**Just the Beginning Organization**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
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Dear Judge Walker:

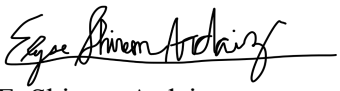
I am a rising third-year law student at Boston University School of Law writing to apply for a one-year clerkship in your chambers beginning in August 2024. I was born and raised in Virginia, I attended the College of William & Mary, and I plan to make Virginia my home again after graduation.

At BU Law, I have developed clear and effective writing through my work as a staff member and Senior Note Development Editor of the *Boston University Law Review* and my participation in the Edward C. Stone Moot Court Competition, in which I won Best Brief. I look forward applying those skills in the coming year as a student attorney in BU Law's Defenders Program. Beyond my academic experiences, my work prior to law school has prepared me to contribute positively to your chambers. While waiting tables full-time as an undergraduate student, I worked collaboratively with a wide range of personalities in a high-pressure environment while remaining dependable, compassionate, and level-headed. As a Teach For America corps member balancing classroom instruction, lesson planning, and grading hundreds of papers every week, I learned to meet tight deadlines without sacrificing my meticulous attention to detail. I hope to bring these same qualities to your chambers as a law clerk after graduation.

My resumé, transcript, and writing sample are attached to this application. My GPA reflects four semesters of grades, but my official transcript has not yet been made available; I will upload an updated transcript when it is released later this week. My letters of recommendation from Professors Keith N. Hylton (617-353-8959), Gerald F. Leonard (617-353-3138), and Jennifer McCloskey (617-353-3199) will arrive separately.

Please let me know if I can provide any additional information. Thank you for your time and consideration.

Respectfully,



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EDUCATION

Boston University School of Law — Boston, MA
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Honors: *Boston University Law Review* – Senior Note Development Editor (2023-24), Editor (2022-23)
Homer Albers Prize Moot Court Competition – Quarterfinalist (2023)
Edward C. Stone Moot Court Competition – Best Brief (2022)
International Negotiation Competition – U.S. National Representative (2022)
ABA Negotiation Competition – BU Co-Champion, National Semifinalist (2021-22)
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Leadership: Middle Eastern and South Asian Law Students Association – President (2022-23)
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College of William & Mary — Williamsburg, VA
B.A., Hispanic Studies; Minors in Economics and Teaching ESOL — May 2019

PROFESSIONAL EXPERIENCE

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Summer Associate — Expected July 2023

Cooley LLP — Washington, D.C.
Business Litigation Summer Associate — May 2023 – Present

Boston University School of Law — Boston, MA
Research Assistant to Professor Keith N. Hylton — January 2023 – Present
- Research and outline article analyzing application of federal antitrust law to state, sub-state, and hybrid actors.
- Edit and Bluebook articles and book chapters on topics in antitrust, law and economics, and tort law.

Teaching Assistant, LLM in American Law Program — August 2022 – November 2022
- Provided supplemental instruction for Criminal Law for LLMs and Introduction to American Law.

Massachusetts Supreme Judicial Court — Boston, MA
Judicial Extern to the Honorable Dalila A. Wendlandt — January 2023 – April 2023
- Researched topics in statutory interpretation, constitutional history, criminal procedure, and legal ethics.
- Drafted bench memorandum, summaries of petitions for further appellate review, and bar discipline order.

Amazon.com, Inc. — Arlington, VA
Day One Legal Academy Intern — July 2022
- Researched current and proposed biometric data privacy laws to inform Amazon One product strategy.

Haynes and Boone, LLP — Washington, D.C.
Summer Associate & 1L LCLD Scholar — May 2022 – July 2022
- Researched and drafted memoranda on topics in advertising, intellectual property, and food and drug law.
- Evaluated cosmetic, drug, and supplement packaging for compliance with FDA and FTC regulations.
- Acted as point of contact for clients in pro bono immigration and housing cases in English and Spanish.

Teach For America Miami-Dade — Miami, FL
Eighth Grade English Teacher & Grade Level Chair, Jose De Diego Middle School — June 2019 – June 2021
- Raised average student literacy score 2+ grade levels through self-designed lessons in reading and writing.

PRO BONO

Discovering Justice — Boston, MA
Mock Juror and Recruitment Volunteer — December 2022 – Present
- Serve as juror in youth mock trial competitions; identify potential judges and coaches in local communities.

Restore the Fourth — Virtual
Litigation Working Group Volunteer — December 2022 – February 2023
- Research origins of procedural due process for vehicle owners in civil forfeiture proceedings for amicus brief.

LANGUAGES & INTERESTS

Fluent in Spanish. Enjoy playing tennis and reading literary fiction. Experienced in aquaculture and urban farming.

BOSTON UNIVERSITY SCHOOL OF LAW

Name: ARDAIZ, ELYSE S
Date Entered: 09/07/2021
Colleges and Degrees:
COLLEGE OF WILLIAM AND MARY, B.A. 5/11/2019
Other Law School Attendance:

Degree Awarded:
Date Graduated:
Honors:

Academic Record		Credits	Grades
Semester 1 - 2021 -2022			
CIVIL PROCEDURE (D)	COLLINS	4	A-
CONTRACTS (D)	O'BRIEN	4	B+
LAWYERING SKILLS 1	MCCLOSKEY	2.5	A
TORTS (D1)	BORENSTEIN	4	A+
Semester 2 - 2021 -2022			
CONSTITUTIONAL LAW (D)	WEXLER	4	A-
CRIMINAL LAW (D)	LEONARD	4	A
LAWYERING LAB	VOLK ET AL	1	P
LAWYERING SKILLS II	MCCLOSKEY	2.5	A-
MOOT COURT	MCCLOSKEY	-	P
PROPERTY (D)	LAWSON	4	B
Semester 3 - 2021 -2022			
BUSINESS FUNDAMENTALS	WALKER/TUNG	-	P

Year	Hours	Weighted Points	Weighted Average					
1st	29/30	107.25	3.70					

Semester 1 - 2022 -2023			
CRIMINAL PROCEDURE: ADJUDICATORY	LEONARD	3	A-
ECONOMICS OF IP LAW (S)	HYLTON	3	A+
INTRO TO FEDERAL INCOME TAXATION	FELD	4	A-
LAW REVIEW - 2L MEMBER		1	CR
TRADEMARK & UNFAIR COMPETITION	DOGAN	3	A-
Semester 2 - 2022 -2023			
EVIDENCE	DONWEBER	4	A-
JUDICIAL EXTERNSHIP PROGRAM: FIELDWORK		4	P
JUDICIAL EXTERNSHIP PROGRAM: SEMINAR	SRAGOW LICHT	1	A
LAW REVIEW - 2L MEMBER		1	CR
TAXATION OF CORPORATIONS & SHAREHOLDERS	FELD	3	A-

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average		
2nd	21/27	79.80	3.80	50/57	187.05	3.74		

Semester 1 - 2023 -2024			
CRIMINAL TRIAL ADVOCACY	WILSON	3	*
CRIMINAL TRIAL PRACTICE I	WILSON	5	*
FEDERAL COURTS	YACKLE	4	*
FOOD, DRUG & COSMETIC LAW	MILLER	3	*
Semester 2 - 2023 -2024			
CRIMINAL TRIAL PRACTICE II/DEFENDERS	STAFF	8	*
EFFECTIVE & ETHICAL DEPOSITIONS (B1)	BROWNE	3	*
LIFE SCIENCES GENERAL COUNSEL	SHERBET	2	*
SUPREME COURT DECISIONMAKING	BEERMANN	3	*

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average	Total Hours	Final Average
3rd			0.00	50/57	187.05	3.74	50/57	3.74

1974 Family Educational Rights and Privacy Act Information

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Status: (Good Standing is certified unless otherwise noted)

This record is a certified transcript only if it bears an official signature below.

Aida E. Ten

Aida E. Ten, Registrar

Date Printed: 6/12/2023